

FINDING OF SUITABILITY TO TRANSFER (FOST)

NON-AIRFIELD PARCEL

**NAVAL SUPPORT ACTIVITY MID-SOUTH
MILLINGTON, TENNESSEE**

NOVEMBER 1999

Prepared By

**COMMANDING OFFICER
SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
CHARLESTON, SOUTH CAROLINA**



ENSAFE INC.

ENVIRONMENTAL AND MANAGEMENT CONSULTANTS

5724 Summer Trees Drive • Memphis, Tennessee 38134 • Telephone 901-372-7962 • Facsimile 901-372-2454 • www.ensafe.com

December 3, 1999

Commanding Officer
Attn: David Porter
SOUTHNAVFACENGCOM
2155 Eagle Drive
P.O. Box 190010
North Charleston, SC 29419-9010

Subject: CTO-129; NSA Mid-South, Millington, Tennessee

Document Transmittal: *Finding of Suitability to Transfer (FOST) - Airfield Parcel, Naval Support Activity (NSA) Mid-South and Finding of Suitability to Transfer - Non-Airfield Parcel, NSA Mid-South, November 1999*

Reference: Contract N62467-89-D-0318 (CLEAN II)

Dear Sir:

Please find enclosed three copies of the Airfield Parcel FOST, 10 copies of the Non-Airfield Parcel FOST, and four copies of the Land Use Controls Implementation Plan map for NSA Mid-South prepared by Southern Division. As requested, EnSafe has produced this document for distribution. Copies have also been distributed to the Millington Industrial Development Board (Phil Whittenburg) and their attorney (Robert Liddon), the Millington Municipal Airport Authority (Russ Noble, airfield parcel only), and the BRAC Cleanup Team (as shown on the attached NSA Mid-South RFI Distribution List).

If you have any questions or comments of a technical nature, please contact me at 901/372-7962. Comments or questions of a contractual nature should be directed to Debra Blagg at the same number.

Sincerely,

EnSafe Inc.

By: Lawson M. Anderson, CHMM
Task Order Manager

Enclosures: As Stated

cc: Contracts File: CTO-129 (w/out enclosure)
Project File: 0129-001-29-162-00/0129-001-29-262-00 (w/out enclosure)
SOUTHDIV: Ms. Kim Reavis/Code 0233KR (w/out enclosure)
Other: See attached NSA Mid-South RFI Distribution List

FINDING OF SUITABILITY TO TRANSFER

NON-AIRFIELD PARCEL NSA MID-SOUTH, MILLINGTON, TENNESSEE

1.0 **Purpose**

This Finding of Suitability to Transfer (FOST) documents my determination, as the responsible Department of Defense (DoD) component official, that the real property and associated improvements known as the Non-Airfield Parcel (Subject Property) located on the former Naval Air Station Memphis (currently known as Naval Support Activity Mid-South), Millington, Tennessee, are suitable for transfer by deed. This decision is based on a review of information contained in the Environmental Baseline Survey for Transfer (EBST), which is attached to this FOST as Exhibit A, the City of Millington's (City) Reuse Plan for the site, and the Navy's Covenant Deferral Request as approved by the Governor of Tennessee. Factors leading to this decision and other pertinent information related to property transfer requirements are stated below.

2.0 **Property Description**

Subject Property consists of approximately 1,310.46 acres and numerous buildings and structures. These buildings range from facilities formerly used to support airfield operations and technical training (such as warehouses and classrooms) to recreational areas. Several buildings are currently leased to the Millington Industrial Development Board (MIDB); others are vacant. Some of the open land is out-leased for agricultural use. More specific information in this regard is provided in the EBST (Exhibit A).

Subject Property will be conveyed by the Navy, (Grantor), to the MIDB, (Grantee), by eight (8) separate Quitclaim Deeds for those specific parcels identified on the map attached as Exhibit B.

3.0 **Past Use and Proposed Reuse**

Subject Property was acquired by the U.S. Navy in 1942. From the 1940s until 1997, the primary mission of the facility was to serve as the host command for the Naval Air Technical Training Center (NATTC). In October 1993, as a result of the Base Closure and Realignment Act of 1990 (BRAC), Subject Property was included in the portion of former Naval Air Station Memphis which was determined excess and scheduled for closure/disposal. Operational closure of the facilities within Subject Property was completed in October 1997.

The Reuse Plan developed by the City's Base Reuse Committee contemplates an industrial and business park development. Of the total acreage in the Non-Airfield Parcel, approximately 55% is planned for industrial business, 23% for office/commercial and office/residential, and 22% for open space or land reserve and institutional uses. The planned office/residential use is limited to an area of approximately 46.920 acres north of the former Navy Hospital.

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4.0 Environmental Findings

The attached EBST (Exhibit A) provides site-specific information on buildings, facilities, and open land within Subject Property. Significant findings are summarized in the sub-paragraphs below. With the exceptions noted in sub-paragraphs (a) and (b), all property falls within DoD condition of property classifications (as defined below) 2/Blue, 3/Light Green, and 4/Dark Green.

- **Category 1 / White** - Areas where no storage, release, or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).
- **Category 2 / Blue** - Areas where only the storage of hazardous substances or petroleum products has occurred (but where no release, or disposal, or migration from adjacent areas has occurred).
- **Category 3 / Light Green** - Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred but at concentrations that do not require a removal or remedial action.
- **Category 4 / Dark Green** - Areas where storage, release or disposal and/or migration of hazardous substances or petroleum products has occurred, and all removal or remedial actions to protect human health and the environment have been taken.
- **Category 5 / Yellow** - Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred, removal and/or redial actions are underway, but all required remedial actions have not yet been taken.
- **Category 6 / Red** - Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred, but required response actions have not yet been implemented.
- **Category 7 / Gray** - Areas that are un-evaluated or require additional evaluation.

A complete copy of this FOST will be attached to each of the eight (8) Quitclaim Deeds to be used to effect transfer of the Subject Property to the MIDB. For ease of review, each deed will set out those specific portions of the FOST and EBST which pertain to the property being conveyed. Hence, any prospective purchaser of a given parcel from the MIDB who may desire information only about that parcel need refer only to the pertinent sections of the FOST and EBST identified in the Quitclaim Deed for that parcel. Likewise, any person seeking to determine those specific use restrictions which will apply to a given parcel need refer only to the Quitclaim Deed pertaining to that parcel.

a. Hazardous Substances

The areas listed in Table 1 have remaining hazardous substance contamination requiring further action. The groundwater contamination is limited to the fluvial deposits aquifer, and there is no existing exposure pathway to human health or ecological receptors. As provided under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, these areas are suitable for deed transfer under the terms of the Covenant Deferral Request prepared and submitted by the Navy to the Governor of Tennessee for approval. Cleanup work by the Navy in these areas will continue after property transfer consistent with the terms of that request which is attached as Exhibit C to this FOST.

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Table 1: Areas of Hazardous Substance Contamination Requiring Further Action						
Quitclaim Deed #	Facility	Description	BRAC Classification	Media of Concern	Approximate Area	Status
1	Not applicable - no areas requiring remediation of hazardous substances					
2	AOC A	Northside Fluvial Deposits Groundwater	6(Red)	Fluvial groundwater contaminated with chlorinated solvents	42 acres	Corrective Measures Study in progress - scheduled completion in 2000.
3	OL-009	Turkey Shoot Area	6 (Red)	surface soil contaminated with lead	0.63 acre	Removal of 325 cubic yards of lead-contaminated soil is planned for February 2000.
	GW-5	Background Well No. 5	6 (Red)	Fluvial groundwater contaminated with chlorinated solvents (off-site non-Navy groundwater migrating onto Navy property)	0.5 acre	TDEC is pursuing the investigation of the site with the potentially responsible party through their Superfund Program.
4	SWMU 5	Aircraft Fire Fighting Training Area	6(Red)	Fluvial groundwater contaminated with carbon tetrachloride	3.17 acres	Corrective Measures Study in progress - scheduled completion in 2000
5	Not applicable - no areas requiring remediation of hazardous substances					
6	AOC A	Northside Fluvial Deposits Groundwater	6(Red)	Portions of fluvial groundwater contaminated with chlorinated solvents	11.45 acres	Corrective Measures Study in progress - scheduled completion in 2000.
7	Not applicable - no areas requiring remediation of hazardous substances					
8	Not applicable - no areas requiring remediation of hazardous substances					

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b. Petroleum Releases to Subsoils and Groundwater

The areas listed in Table 2 have remaining sub-surface soil and groundwater petroleum contamination requiring further investigation and possible remediation. There are no existing exposure pathways so these sites do not currently pose a risk to human health. Cleanup work by the Navy in these areas will continue after property transfer, and use of these areas will be restricted pending completion of all necessary investigative and remedial activities.

Table 2: Areas of Petroleum Contamination Requiring Further Action						
Quitclaim Deed #	Facility	Description	BRAC Classification	Media of Concern	Approximate Area	Status
4	SWMU 5	Aircraft Fire Fighting Training Area	6(Red)	Loess groundwater contaminated with benzene	3.17 acres	Remedial options being evaluated under the Loess Corrective Measures Study.
6	N-12	Former AIMD GSE Building	6(Red)	Loess groundwater contaminated with benzene	0.5 acre	Remedial options being evaluated under the Loess Corrective Measures Study.

The 2 acre site at former USTs 304 and 1239 (both within Quitclaim Deed # 6), originally classified as Category 5/Yellow in the EBST, has since been reclassified as Category 4/Dark Green. Since no further cleanup actions are required in connection with this site, it is not included under the above table. The monitoring wells associated with this site have been abandoned in accordance with State regulatory requirements.

In addition to the areas noted above, the MIDB will be provided notice by deed as to those areas where petroleum contaminated soil has been remediated to State cleanup standards, but where residual petroleum contamination greater than 100 part per million (ppm) Total Petroleum Hydrocarbons (TPH) may still be present. This notice will be provided because soils in excess of 100 ppm TPH may have special disposal requirements under State solid waste regulations if they are disposed of off-site. A map of these areas is included as Exhibit D.

c. Other Environmental Aspects:

1. **Asbestos Containing Materials.** An asbestos containing material notice (Exhibit E) will be provided to the MIDB via inclusion in Quitclaim Deeds 1, 3, 5, 6, and 7, in connection with those specific buildings listed Table 3 below.

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The attached EBST provides site-specific information on asbestos. With the exception of the crawl space in building N-11, abatement work has been completed on all asbestos in buildings and facilities where the asbestos was damaged, friable, and accessible. Access to the crawl space in building N-11 is prohibited until all necessary abatement work is completed.

Table 3: Asbestos Containing Materials	
Quitclaim Deed #	Buildings Where Notification is Required
1	382
2	Not applicable
3	339, 377
4	None
5	N-1, N-201, steam pits
6	N-11, N-13, N-14, N-16, N-102, N-112, steam pits
7	761, 1632
8	Not applicable

2. Lead Based Paint

All the buildings on the Subject Property are nonresidential structures, and thus are not subject to federal law governing lead-based paint (LBP) and LBP hazards in "target housing." It is likely that all buildings and structures constructed before 1980 were painted with LBP, and exposed metal components on any structure built before 1990 were painted with LBP primers. It is probable that buildings constructed after 1978 do not contain lead-based paint; however, no tests have been performed to confirm the presence or absence of lead-based paint in any building. Surface-soils (excluding the Former Turkey Shoot Area) that have been analyzed for lead show an average lead concentration of 60 mg/kg which is well below both the USEPA residential (400 mg/kg) and industrial (1,300 mg/kg) soil cleanup levels. A Lead-Based Paint Hazards Advisory Statement, Exhibit F, will be provided to the MIDB as an exhibit to Quitclaim Deeds 1, 3, 5, 6, and 7, in connection with those buildings listed in Table 4 below.

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Table 4: Building/Structures Assumed to Contain Lead-Based Paint	
Quitclaim Deed #	Buildings Where Lead-Based Paint Assumed due to age
1	382, 383
2	None
3	339, 377, 378
4	None
5	N-1, N-201
6	N-11, N-13, N-14, N-16, N-102, N-112, N-122
7	761, 1505, 1529, 1530, 1531, 1532, 1542, 1543, 1561, 1562, 1568, 1569, 1570, 1571, 1572, 1573, 1584, 387, 1461, 1616, 1575, 1574, 1522, 1521, 1520, 1519, 1518, 1517, 1516, 1464, 1463, 1632, N-118
8	None

3. Polychlorinated Biphenyls (PCBs)

No PCB contaminated electrical equipment associated with the power distribution system remains on the Subject Property, with the exception of florescent light ballasts. Current PCB regulations (40 CFR Part 761 et. seq.) do not require the removal of such ballasts. No other PCB contamination issues are associated with the Subject Property. A PCB notice, Exhibit G, will be provided to the MIDB via inclusion in Quitclaim Deeds 1, 3, 4, 5, 6, and 7, in conjunction with those buildings listed in Table 5 below.

4. Radon

The Subject Property has not been surveyed for radon. A radon assessment was performed in 1989 at selected housing units adjacent to the Subject Property, and the results were less than the U.S. EPA's prescribed action level of 4 picoCuries per liter.

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Table 5: Polychlorinated Biphenyls (PCBs)	
Quitclaim Deed #	Building/Structures Assumed to Contain Florescent Light Ballasts
1	382, 383
2	None
3	339, 377, 378
4	None
5	N-1, N-201, 348
6	N-11, N-13, N-14, N-16, N-102, N-112, N-122
7	761, 1584, 387, 1461, 1616, 1575, 1574, 1522, 1521, 1520, 1519, 1518, 1517, 1516, 1464, 1463, 1632, N-118, 1734
8	None

5. Pesticides

The pesticide chlordane was used in and around the foundations of building for subterranean termite control until the late 1980s, and can be expected to be found there at concentrations between 500 and 1,000 mg/kg. These pesticide dieldrin has been found to be ubiquitous across the property due to aerial applications in the 1950s and 1960s to control a U.S. Department of Agriculture quarantined pest, the white-fringed beetle. As part of the RCRA Facility Investigation, a background dieldrin concentration for surface soil of 0.131 mg/kg was calculated and the cancer risk associated with dieldrin in surface soil was evaluated. It was determined that dieldrin concentrations reported at each SWMU do not necessitate remedial action in the absence of other significant carcinogenic risk contributors.

5.0 Requirements Applicable To Property Transfer

a. NEPA

National Environmental Policy Act (NEPA) requirements for this action have been satisfied through an Environmental Assessment, resulting in a Finding of No Significant Impact (FONSI) executed on 12 January 1999. A copy of this FONSI is attached to this FOST as Exhibit H.

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b. Hazardous Substance Notice

In accordance with Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, and 40 CFR Part 373 (Hazardous Substances Reporting Requirements for Selling or Transferring Federal Real Property), a hazardous substance notice will be provided in the Quitclaim Deeds for those specific parcels where it is known, based upon a complete search of agency files, that hazardous substance were stored for one year or more, released or disposed of on the parcel. That notice, reflected in Table 6 below and Exhibit I to this FOST, will also provide a summary of all response actions taken to date to address such contamination. More detailed information concerning such response actions is set forth in those documents which make up the Administrative Record for NSA Mid-South.

c. CERCLA Covenants

Table 7 below delineates those Quitclaim Deed parcels or areas within such parcels where the deed covenants required by Section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), will be provided to the MIDB. It also delineates those parcels or areas within a parcel exempted from coverage by such covenants through the Navy's Covenant Deferral Request as approved by the Governor of Tennessee. Those specific covenants to be provided shall read substantially as follows:

(i) Grantor covenants that all remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on the property has been taken before the date of transfer, and

(ii) Grantor covenants that any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

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Table 6: CERCLA 120(h)(3)(A)(i) / 40 CFR 373 Hazardous Substance Reporting Requirements for Selling or Transferring Federal Real Property *

** Consistent of 40 CFR Part 373 requirements, this notice pertains only to the known storage greater than one year, release, or disposal of hazardous substances in excess of their established reportable quantities.*

Quitclaim Deed #	Applicable Location(s)	Approximate Area (acres)	Known Substance(s)
1	SWMU 8	4.77	ethylene oxide
2	AOC A	42	TCE, carbon tetrachloride
3	Turkey Shoot	0.63	Lead
	Fuel Farm	6.71	benzene, xylenes
	SWMU 60	0.31	benzene, xylenes, methylene chloride, nickel, lead
	SWMU 27	0.31	chlorine, lead, nickel
4	SWMU 5	3.17	benzene, xylenes, lead, nickel, cadmium, TCE, TCA, carbon tetrachloride, methylene chloride
5	SWMU 40	3.31	lead, nickel, cadmium, benzene, xylenes, methylene chloride
6	AOC A (including SWMUs 18 and 64)	11.45	TCA, TCE, carbon tetrachloride, benzene, xylenes, lead, cadmium, nickel, methylene chloride
7	None		
8	None		

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Table 7: CERCLA 120(h)(3)(A)(ii) Covenant / Covenant Deferral			
Quitclaim Deed #	Applicable Location(s)	Approximate Area (acres)	Covenant to be Provided or Deferred
1	Entire Parcel	247	Provided
2	Entire Parcel	42	Deferred
3	Turkey Shoot	0.63	Deferred
	Remaining Parcel (includes area with non-Navy contamination migrating onto parcel)	153.37	Provided* *additional remedial action required by non-Navy entity
4	SWMU 5	5	Deferred
	Remaining Parcel	3	Provided
5	Entire Parcel	50	Provided
6	AOC A	11.45	Deferred
7	Entire Parcel	727	Provided
8	Entire Parcel	56	Provided

d. CERCLA Access Clauses

Each Quitclaim Deed to be provided to the MIDB will contain the following access clause:

In accordance with Section 120(h)(3)(A)(iii) of CERCLA, as amended, [42 U.S.C. 9620(h)(3)(A)(iii)], the GRANTOR reserves the right and GRANTEE covenants that GRANTOR and the State of Tennessee and their officers, agents, employee's, contractors and subcontractors shall have access to all portions of the PROPERTY for future environmental investigation, remediation or other corrective actions. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the GRANTOR. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance of the PROPERTY, or in which access is necessary to carry out a remedial action, response action or corrective action on adjoining property. In exercising these rights of access, except in the case of imminent endangerment to human health and the environment, GRANTOR or the State (a) shall give the GRANTEE or the then-owner of the property upon which access is sought reasonable prior written notice of the actions to be taken related to such response or corrective actions at the areas affected and (b) shall make reasonable efforts to minimize interference with the ongoing use of those areas.

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e. Land and/or groundwater restrictions

In order to protect human health and the environment, land and groundwater use restrictions will be incorporated into the deed and transfer agreement. These restrictions will also ensure that on-going as well as necessary future environmental investigations and remedial activities at or adjacent to the Subject Property will not be disrupted. A "Land Use Control Implementation Plan" (LUCIP) is attached to this FOST as Exhibit J. Table 8 provides a summary of these restrictions.

f. Indemnification Clause

The federal government shall hold harmless, defend and indemnify the MIDB and any future successor, assignee, transferee, lender, or lessee of the Subject Property from any suit, demand, cost or liability arising out of any claim for personal injury or property damage that may result from, or in any manner be predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant or petroleum or petroleum derivative resulting from Department of Defense activities on the property subject to the conditions specified in, and to the extent authorized by, Section 330 of Public Law 102-484.

g. Notification to Regulatory Agencies and Public

In accordance with DoD guidance, the U.S. EPA and the TDEC have been advised of the proposed transfer of the Subject Property and draft copies of the EBST and FOST were provided to those agencies for review. The draft EBST and FOST were also made available for public review during a fourteen-day (14) public comment period. All regulatory agency and public comments received were considered and incorporated as deemed appropriate. Any unresolved comments and the Navy's responses thereto are included in Exhibit K to the FOST. Copies of all transfer documentation provided to the MIDB will be made available to U.S. EPA and TDEC representatives upon request after execution of the same.

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Table 8: Land Use Controls						
Quitclaim Deed #	Applicable Location(s)	Area (approx acreage)	Type of Reuse Allowed	Restrictions on use of Groundwater	Restrictions on Drilling	Other Restrictions
1	SWMU 8	4.77	Non-residential	No use of loess or fluvial	No well drilling without prior approval	No intrusive activities without prior approval
	Remaining Parcel	242.23	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None
2	Entire Parcel	42	Non-residential	No use of loess or fluvial	No well drilling without prior approval	None
3	SWMU 60	0.31	Non-residential	No use of loess or fluvial	No well drilling without prior approval	No intrusive activities without prior approval
	Background Well No. 5	0.5	Non-residential	No use of loess or fluvial	No well drilling without prior approval	None
	Turkey Shoot	0.63	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	No intrusive activities without prior approval
	Remaining Parcel	142.56	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None
4	SWMU 5	5	Non-residential	No use of loess or fluvial	No well drilling without prior approval	Access prohibited until CMS for Loess groundwater is completed.

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Table 8: Land Use Controls

Quitclaim Deed #	Applicable Location(s)	Area (approx acreage)	Type of Reuse Allowed	Restrictions on use of Groundwater	Restrictions on Drilling	Other Restrictions
4 (continued)	Remaining Parcel	3	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None
5	Entire Parcel	50	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None
6	AOC A	11.45	Non-residential	No use of loess or fluvial	No well drilling without prior approval	None
	Remaining Parcel	14.55	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None
7	Entire Parcel	727	Non-residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None
8	Entire Parcel	56	Residential	No use of loess or fluvial	Wells, where not otherwise prohibited, will be cased and grouted through the loess and fluvial deposits	None

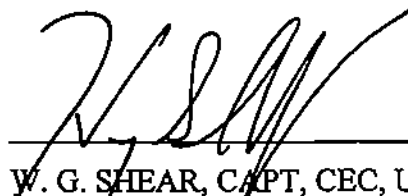
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6.0 Suitability Determinations

NOW THEREFORE, based upon my review of the information contained in the attached EBST as well as the City of Millington's Reuse Plan for NSA Mid-South , I have determined that the Subject Property is presently suitable for deed transfer to the City of Millington for the intended purposes subject to application of those specific land and groundwater use restrictions described above.

19 NOV 99

Date



W. G. SHEAR, CAPT, CEC, USN
Acting Commanding Officer
Southern Division
Naval Facilities Engineering Command
North Charleston, SC

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EXHIBIT “A”

**ENVIRONMENTAL
BASELINE SURVEY FOR
TRANSFER**

NOTE:

**DUE TO SPACE LIMITATIONS, THE FOLLOWING
DOCUMENT**

***ENVIRONMENTAL BASELINE SURVEY FOR
TRANSFER, NAVAL SUPPORT ACTIVITY MID-
SOUTH, NON-AIRFIELD PARCEL, REVISION 4,
DATED 2 JULY 1999***

**IS NOT INCLUDED AS AN ATTACHMENT, BUT
CAN BE VIEWED AT THE FOLLOWING
REPOSITORY LOCATIONS:**

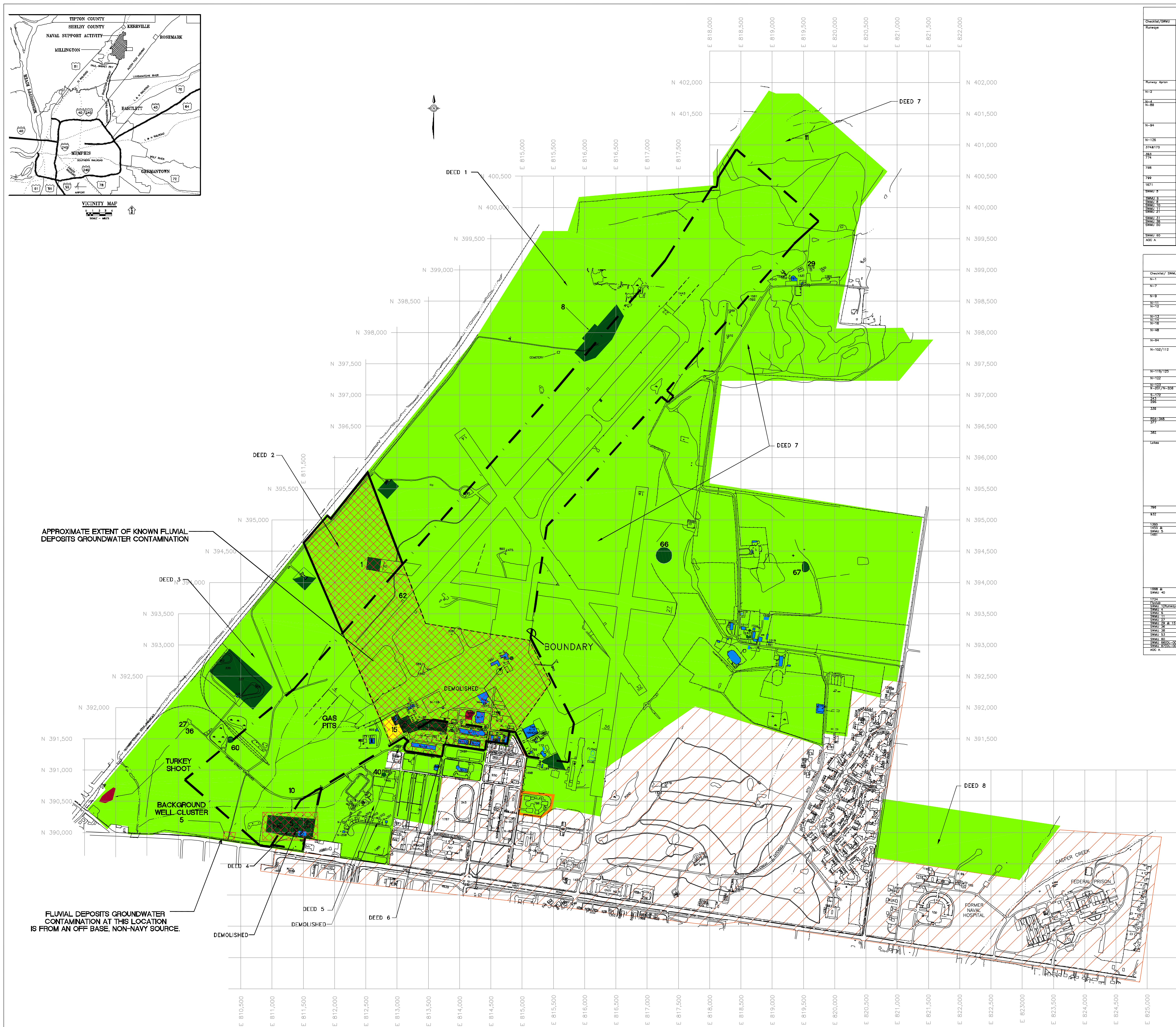
**SHELBY COUNTY PUBLIC LIBRARY
MILLINGTON BRANCH
4848 NAVY ROAD
MILLINGTON, TENNESSEE 38053
(901) 872-1585**














**PUBLIC AFFAIRS OFFICE
BUILDING 455
5722 INTEGRITY DRIVE
MILLINGTON, TENNESSEE 38054-5045
(901) 873-5761**

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NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “B”

**ENVIRONMENTAL
CONDITION OF
PROPERTY MAP WITH
QUITCLAIM DEED AREAS
IDENTIFIED**

[illegible][illegible]

- | LEVEN | |
|---|--|
|  | 1) Areas where no storage, release, or disposal of hazardous substances or petroleum products has occurred (Due to migration of these substances from adjacent areas) [unaf] |
|  | 2) Areas where only storage of hazardous substances or petroleum products has occurred (but no releases, disposal, or migration from adjacent areas) [Stua] |
|  | 3) Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred, but no concentrations that do not require a removal or remedial action [light area] |
|  | 4) Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred, and it is needed to initiate measures to protect human health and the environment from being harmed [see area] |
|  | 5) Areas where storage, release, disposal and/or migration of hazardous substances or petroleum products has occurred, but no required removal [light area] |
|  | 6) Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred, but required response actions have not yet been implemented [red] |
|  | 7) Areas that are unclassified or require additional evaluation [grey] |
|  | 8) Area of known issue(s) for/ or future detailed groundwater contamination requiring remediation or corrective measures (Study by the Noy) |
|  | Privately owned by Noy |
|  | Demanded Buildings |
|  | Air-fid (338 meters from Air-fid (1.329 km) percent boundary |
|  | Big square (Approximately 3.5 square km) |
|  | SWU Identification Number |
- 67

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “C”

**APPROVED CERCLA
120(h)(E)(C) COVENANT
DEFERRAL REQUEST**

NOTE:

**DUE TO SPACE LIMITATIONS, THE APPROVAL
LETTER ONLY IS INCLUDED FOR THE BELOW
LISTED DOCUMENT:**

***COVENANT DEFERRAL REQUEST, NAVAL
SUPPORT ACTIVITY MID-SOUTH, APRIL 1999***

**THE ENTIRE DOCUMENT CAN BE VIEWED AT
THE FOLLOWING REPOSITORY LOCATIONS:**

**SHELBY COUNTY PUBLIC LIBRARY
MILLINGTON BRANCH
4848 NAVY ROAD
MILLINGTON, TENNESSEE 38053
(901) 872-1585**

**PUBLIC AFFAIRS OFFICE
BUILDING 455
5722 INTEGRITY DRIVE
MILLINGTON, TENNESSEE 38054-5045
(901) 873-5761**



STATE OF TENNESSEE

DON SUNDQUIST
GOVERNOR

September 24, 1999

Ms. Elsie L. Munsell
Deputy Assistant Secretary of the Navy
Department of the Navy
Office of the Assistant Secretary
(Installations and Environment)
1000 Navy Pentagon
Washington, DC 20350-1000

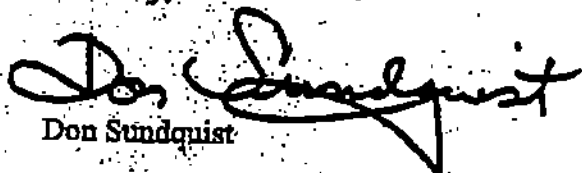
RE: Request for Covenant Deferral under CERCLA §120(h)(3)(C) for
Naval Support Activity, Mid-South at Millington, Tennessee

Dear Ms. Munsell:

This letter is to express my approval of the Navy decision to make an early deed transfer of the above-referenced site.

Based on the information you provided in the Covenant Deferral Request (CDR), it appears that this transfer will comply with early transfer provisions found in CERCLA. It is my understanding and expectations that the Navy will remain fully responsible for any remediation that may be necessary at the site. It is my further understanding that this CDR does not waive or impact in any way, the State's right to recover any damages that may have been caused to Natural Resources.

Sincerely,

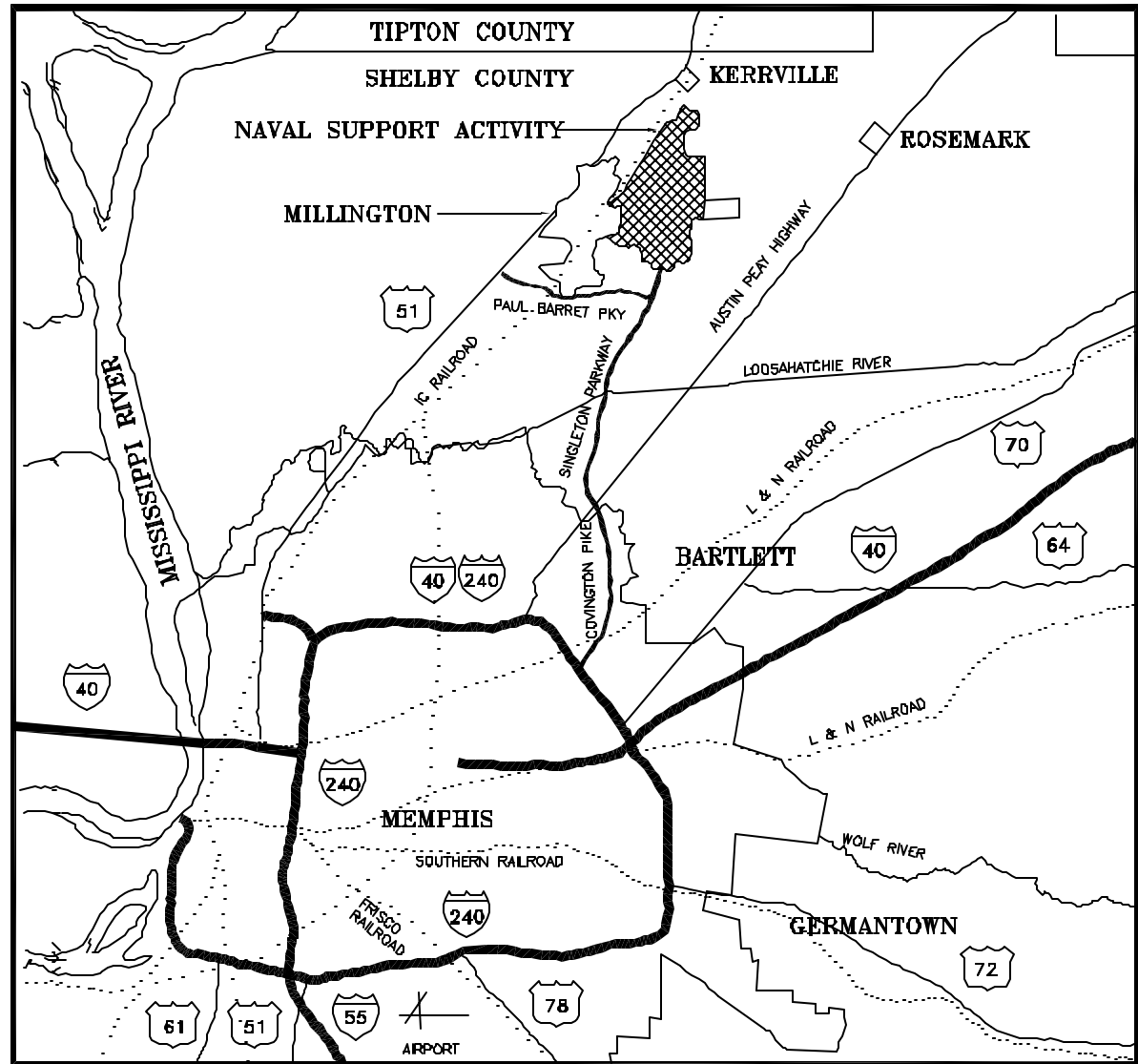

Don Sundquist

DS/ML

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “D”

**PETROLEUM
NOTIFICATION MAP**



VICINITY MAP
SCALE = 1" = 1 MILE



MAP MAXIMUM CONC. ID (mg/kg TPH)	SITE	DEPTH (FT. BLS)	SWMU	REFERENCE	APPLICABLE TOED CLEAN UP LEVEL (mg/kg TPH)	COMMENTS
855	SWMU 60	8	60	SWMU 60 RPT REPORT, REV. 3, 5/28/99	1,000	
2	SWMU 18	12	18	SWMU 18, CS/RT REPORT, REV. 2, 5/25/99	500	
3	12991	8	15	INSE WAS NOT MEETING MINUTES (MINUTES ID: 665, 8/28/99)	1,000	ADDITIONAL INVESTIGATION MAY BE REQUIRED UNDER THE LOSS CORRECTIVE MEASURES STUDY.
4	740	12		FINAL SOIL REMOVAL RPT FORMER TANKS 7, 303, & 1241, ENSAFE INC., 1/27/99	500	
5	300	15		FINAL EAR FLYING CLUB UST SITE FACILITY #6-78849, 10/15/93	1,000	
6	3000	1	6	ASSEMBLY B RPT REPORT, REV. 2, 1/3/97	100	NO FURTHER ACTION REQUIRED AT THIS SITE DUE TO THE ACCEPTABLE RISK LEVELS.
7	170	1	38	ASSEMBLY B RPT REPORT, REV. 2, 1/3/97	100	NO FURTHER ACTION REQUIRED AT THIS SITE DUE TO THE ACCEPTABLE RISK LEVELS.
8	697	1480/1491	15	UST CLOSURE REPORT TANKS 1490 & 1491, ENSAFE INC., 7/28/97	1,000	
9	597	1662	13	UST CLOSURE REPORT OWS 1662, ENSAFE INC., 5/11/98	1,000	
10	102	336/337	10	UST CLOSURE REPORT TANKS 336 & 337, ENSAFE INC., 6/4/98	500	
11	160	336/337	10	UST CLOSURE REPORT TANKS 336 & 337, ENSAFE INC., 6/4/98	500	
12	452	1621	13	UST CLOSURE REPORT OWS 1621, ENSAFE INC., 5/4/98	1,000	
13	103	1623	15	UST CLOSURE REPORT OWS 1622 & 1623, ENSAFE INC., 8/13/98	1,000	
14	280	SWMU 5	15	SWMU 5 RPT REPORT, REV. 3, 6/3/99	1,000	
15	8800	N-12	7	N-12 UST ENVIRONMENTAL ASSESSMENT RPT, 7/14/98	1,000	ADDITIONAL INVESTIGATION MAY BE REQUIRED UNDER THE LOSS CORRECTIVE MEASURES STUDY.
16	175	1620	1	UST CLOSURE RPT, OWS 1620, ENSAFE INC., 12/17/98	1,000	
17	550	1242/1243	16	UST CLOSURE RPT TANKS 301, 1242, 1243, ENSAFE INC., 8/19/97	1,000	
18	1037	301		UST CLOSURE RPT TANKS 301, 1242, 1243, ENSAFE INC., 8/19/97	1,000	UST CLOSURE APPROVED
19	590	N-3	14	TANK CLOSURE PLAN, CORP OF ENGINEERS, ASST N-3, NO DATE	1,000	

- LEGEND
- AREA OF KNOWN PETROLEUM CONTAMINATION IN SOIL AT A CONCENTRATION GREATER THAN 100 mg/kg, BUT LESS THAN 500 mg/kg.
 - AREA OF KNOWN PETROLEUM CONTAMINATION IN SOIL AT A CONCENTRATION GREATER THAN 500 mg/kg, BUT LESS THAN 1,000 mg/kg.
 - AREA OF KNOWN PETROLEUM CONTAMINATION IN SOIL AT A CONCENTRATION GREATER THAN 1,000 mg/kg.
 - PROPERTY TO BE RETAINED BY NAVY
 - MAP ID
 - BOUNDARY OF NON-AIRFIELD PARCEL
 - BOUNDARY OF AIRFIELD PARCEL
 - BOUNDARY OF BRIG PARCEL

500 0 500
SCALE FEET

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “E”

**NOTICE OF THE
PRESENCE OF ASBESTOS**

NOTIFICATION OF ASBESTOS MATERIALS AND COVENANT

The following notification and covenant, or similar, will be included in the deed:

- (a) The Transferee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (ACM) have been found on the Subject Property, as described in the Environmental Baseline Survey for Transfer (EBST) and the Finding of Suitability to Transfer (FOST). None of the remaining ACM on the Subject Property currently poses a threat to human health or the environment. All asbestos that posed a risk to human health was either removed or encapsulated.
- (b) The Transferee covenants and agrees that its use and occupancy of the Subject Property will be in compliance with all applicable laws relating to asbestos; and that the Government assumes no liability for future remediation of asbestos or damages for personal injury, illness, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Subject Property described in this Deed, whether the Transferee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Transferee agrees to be responsible for any future remediation of asbestos found to be necessary on the Subject Property.

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “F”

LEAD-BASED PAINT HAZARDS ADVISORY

EXHIBIT "F"

Lead-Based Paint Hazards Advisory Statement

(a) Grantor hereby notifies and warns Grantee as follows:

YOU ARE ADVISED THAT BUILDINGS CONSTRUCTED PRIOR TO 1978 MAY PRESENT EXPOSURE TO LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL DAMAGE. YOU ARE FURTHER ADVISED THAT LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT WOMEN. WORKERS MAY ALSO SUFFER ADVERSE HEALTH EFFECTS FROM LEAD DUST OR FUME EXPOSURE.

(b) Grantee acknowledges that the Environmental Baseline Survey for Transfer (EBST), and Finding of Suitability to Transfer (FOST), represent the best information available to Grantor as to the presence of Lead-Based Paint and Lead-Based Paint hazards in the buildings referred to in the FOST.

(c) By its acceptance of this Deed, Grantee acknowledges and agrees that Grantee, its successors and assigns shall assume full responsibility for preventing future lead exposure by properly managing and maintaining, or, as required by applicable federal, state or local laws and regulations, for abating any Lead-Based Paint hazard which may pose a risk to human health.

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “G”

**NOTICE OF
POLYCHLORINATED
BIPHENYLS (PCBs)
EQUIPMENT**

NOTICE OF POLYCHLORINATED BIPHENYLS (PCBs) EQUIPMENT AND COVENANT

The following notification and covenant, or similar, will be included in the deed:

- (a) The Transferee is hereby informed and does acknowledge that existing overhead fluorescent light ballasts on the Subject Property may contain polychlorinated biphenyls (PCBs), as described in the Environmental Baseline Survey for Transfer (EBST) and Finding of Suitability to Transfer (FOST). The PCB equipment does not currently pose a threat to human health or the environment.
- (b) Upon request, the Navy agrees to furnish to the Transferee any and all records in its possession related to such PCB equipment necessary for the continued compliance by the Transferee with applicable laws and regulations related to the use and storage of PCBs or PCB-containing equipment.
- (c) The Transferee covenants and agrees that its continued possession, use and management of any PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment, and that the Navy assumes no liability for the remediation of PCB contamination or damages for personal injury, illness, disability or death to the Transferee, its successors or assigns, or to any other person, including members of the general public arising from or incident to use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB-containing equipment, whether the Transferee, its successors or assigns have been properly warned or failed to properly warn that individual(s) injured. The Transferee agrees to be responsible, in the future, for any remediation of PCBs or PCB-containing equipment found to be necessary.

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “H”

**FINDING OF NO
SIGNIFICANT IMPACT
(FONSI)**

DEPARTMENT OF DEFENSE
DEPARTMENT OF THE NAVY

FINDING OF NO SIGNIFICANT IMPACT FOR THE DISPOSAL AND REUSE OF
SURPLUS PROPERTY AT NAVAL SUPPORT ACTIVITY MID-SOUTH
(FORMERLY NSA MEMPHIS), MILLINGTON, TN

Pursuant to Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy hereby gives notice that an Environmental Assessment (EA) has been prepared and that an Environmental Impact Statement (EIS) will not be prepared in connection evaluating the environmental impacts associated with the disposal and reuse of surplus property at the Naval Support Activity (NSA) Mid-South, formerly NSA Memphis, located in Millington, TN.

The 1993 Defense Base Closure and Realignment (BRAC) Commission recommended realignment of NSA Memphis and the disposal of all property not required to support continuing non-airfield related operational commitments. This recommendation was then approved by President Clinton and accepted by Congress in 1993. Those facilities and infrastructure associated with former airfield operations have been declared surplus to the needs of the U.S. Government.

The Navy intends on disposing of this surplus property in a manner consistent with the Reuse Plan developed by the Millington Base Reuse Committee (MBRC). This planned reuse was adopted as the proposed action in the EA and contemplates a municipal airport within a larger industrial and business park development. Approximately 69 percent (1,302 acres) of the surplus property would be devoted to industrial business and airfield land uses, 16 percent (307 acres) to office/commercial and office/residential, and 15 percent (291 acres) to open space or land reserve and institutional uses. Of the 1,302 acres designated for industrial business and airfield land uses, 531 acres would support the actual airport operations and 771 acres would be developed for a wide variety of business uses.

In addition to the proposed action, alternative land uses evaluated in the EA included aviation-related development, mixed-use development, and a no-action alternative. The no-action alternative evaluated contemplated the U.S. Government possibly retaining ownership of this property in a caretaker status. Such an alternative would not be consistent with the intent of the BRAC statute. The aviation-related development alternative evaluated contemplated use of the existing runways and aviation support facilities to the maximum extent possible, but was not considered as flexible as the proposed action. The mixed-use development alternative evaluated contemplated land uses similar to the proposed action without any airfield operations.

The proposed action will have no significant impacts upon the physical, biological or socioeconomic environment. No significant impacts to surface waters or wetlands are expected to result under the proposed action. Minor impacts from stormwater runoff from construction areas would be minimized by sedimentation control measures as required by the Millington Stormwater Management Policy and regulations of the Tennessee Department of Environment and Conservation. No significant impacts to air quality are expected under the proposed action. Localized, temporary emissions of fugitive dust, vehicle exhausts, and volatile organic compounds from paints and adhesives would occur in the immediate vicinity of construction areas during development. The proposed action would generate levels of air pollutant emissions associated with air operations similar to preexisting conditions at the former Naval Air Station Memphis. No significant noise impacts are expected to result from the proposed action. Noise from construction sites would only affect the immediate vicinity and would be temporary and occur primarily during the daytime hours. Compliance with all applicable regulations concerning the proper management of hazardous materials and waste will be maintained during the transfer of the surplus property. The Navy will ensure that any hazardous substance contamination remaining on the property which may pose a threat to human health or the environment is appropriately investigated and, as necessary, remediated in accordance with applicable federal and state laws and regulations. In the interim, appropriate institutional controls will be employed to preclude exposure to such contamination. No significant impacts to vegetation or wildlife would occur under the proposed action.


When compared to population growth in Shelby County, the proposed action would not capture a significant percentage of the county's total population growth or have a significant adverse population impact on the City of Millington and surrounding areas. The proposed action would not have an adverse disproportionate human health, economic, or social effect on minority, low-income, children, or other communities in the vicinity of the surplus property. Assuming the projected absorption rates for land sales are realized, the City of Millington and the surrounding region would benefit economically in terms of jobs, wages, and local tax receipts. The proposed action would not have a significant impact on housing in the City of Millington or the surrounding area. Under the proposed action, the residential reuse component is minimal, devoting 53 acres to office or residential use north of the former Naval Hospital. Approximately 318 residential units could be developed. Land uses designated in the proposed action are generally compatible with off-site uses in the surrounding areas. No significant impacts to the local roadway system serving the site would occur from the proposed action. Based on the existing capacity of existing roadways and the improvements and new roadways planned for the area, capacity would be available. No significant impacts to any of the utility systems serving the site are expected. Each of the systems has the capacity to support the proposed action, but improvements to some of the systems would be necessary. The proposed actions would not result in any significant impacts to community facilities and services such as police, fire fighting, emergency medical services, and the education system.

No significant impacts to cultural resources would be expected to result under the proposed action. The Tennessee State Historic Preservation Officer (SHPO), has concurred with the Navy's assessment that no archaeological investigations are required for NSA Mid-South due to the extensive disturbance of soils and the high-density development. One building on the property, Building N-1, is eligible for listing on the National Register of Historic Places. This building is proposed for demolition under the MBRC reuse plan. A Programmatic Agreement is in effect between the Navy, the Advisory Council on Historic Preservation, and the SHPO in addition to subsequent correspondence between the Navy and SHPO, that addresses the mitigation required for Building N-1 demolition.

Mitigation required by the Navy to implement the proposed action is limited to that associated with the demolition of Building N-1. The Navy has agreed to photograph this building and work with the City of Millington to create a display in a future building to be erected on the surplus property.

The Environmental Assessment addressing this action may be obtained from: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P. O. Box 190010, North Charleston, SC 29419-9010 (Attn: Mr. Darrell Molzan, Code 064DM), telephone number (843) 820-5696, fax # (843) 820-5617, or e-mail address molzandj@efdsouth.navfac.navy.mil.

12 JAN 99
Date



W. G. SHEAR
COMMANDER, CEC, U.S. NAVY
ACTING COMMANDING OFFICER

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “I”

HAZARDOUS SUBSTANCE NOTICE AND SUMMARY OF RESPONSE ACTIONS

Notice of Hazardous Substance Storage*/Release for Non-Airfield Parcel
Naval Support Activity Mid-South, Millington, Tennessee**

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation (CERCLA or "Superfund") 42 U.S.C. section 9620(h).

Quitclaim Deed #	Applicable Location(s)	Approximate Area (acres)	Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lbs)	Dates of Storage/Release
1	SWMU 8	4.77	Ethylene Oxide**	Oxane Dimethylene oxide	75-21-8	Unknown	1960s to 1998
2	AOC A	42	Trichloroethene**	TCE Trichloroethylene	79-01-6	Unknown	1940s to 1990s
			Carbon Tetrachloride**	Tetrachloromethane	56-23-5	Unknown	
3	Turkey Shoot	0.63	Lead**	NA	7439-92-1	Unknown	1970s to 1980s
	Fuel Farm	0.10	Benzene**	Benzol Cyclohexatriene	71-43-2	Unknown	1958 to 1998
			Xylenes**	Dimethylbenzene	1330-20-7	Unknown	
	SWMU 60	0.31	Benzene**	Benzol Cyclohexatriene	71-43-2	Unknown	1951 to 1986
			Xylenes**	Dimethylbenzene	1330-20-7	Unknown	
			Methylene Chloride**	Dichloromethane Methylene dichloride	75-09-2	Unknown	
			Lead**	NA	7439-92-1	Unknown	
			Nickel	NA	7440-02-0	Unknown	
	SWMU 27	0.31	Chlorine	NA	7782-50-5	Unknown	1943 to 1984
			Lead**	NA	7439-92-1	Unknown	
			Nickel	NA	7440-02-0	Unknown	

**This notice includes only hazardous substances known to have been stored or released (release noted by **) in excess of reportable quantities, based on a complete search of agency files, in accordance with the requirements of 40 CFR Part 373. Information regarding constituents that have been detected in soil and groundwater, but for which records do not indicate storage, release or disposal in excess of reportable quantities can be found in the applicable Environmental Baseline Survey for Transfer (EBST) and/or RCRA Facility Investigation Report (RFI) for this facility.*

Notice of Hazardous Substance Storage*/Release for Non-Airfield Parcel
Naval Support Activity Mid-South, Millington, Tennessee**

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation (CERCLA or "Superfund") 42 U.S.C. section 9620(h).

Quitclaim Deed #	Applicable Location(s)	Approximate Area (acres)	Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lbs)	Dates of Storage/Release
4	SWMU 5	3.17	Benzene**	Benzol Cyclohexatriene	71-43-2	Unknown	1949 to 1996
			Xylenes**	Dimethylbenzene	1330-20-7	Unknown	
			Lead**	NA	7439-92-1	Unknown	
			Nickel	NA	7440-02-0	Unknown	
			Cadmium	NA	7440-43-9	Unknown	
			Trichloroethene**	TCE Trichloroethylene	79-01-6	Unknown	
			1,1,1-Trichloroethane**	1,1,1-TCA Methyl chloroform Trichloromethylmethane	71-55-6	Unknown	
			Carbon Tetrachloride**	Tetrachloromethane	56-23-5	Unknown	
5	SWMU 40	3.31	Methylene Chloride**	Dichloromethane Methylene dichloride	75-09-2	Unknown	1945 to 1989
			Benzene**	Benzol Cyclohexatriene	71-43-2	Unknown	
			Xylenes**	Dimethylbenzene	1330-20-7	Unknown	
			Lead**	NA	7439-92-1	Unknown	
			Nickel	NA	7440-02-0	Unknown	
			Cadmium	NA	7440-43-9	Unknown	

** This notice includes only hazardous substances known to have been stored or released (release noted by **) in excess of reportable quantities, based on a complete search of agency files, in accordance with the requirements of 40 CFR Part 373. Information regarding constituents that have been detected in soil and groundwater, but for which records do not indicate storage, release or disposal in excess of reportable quantities can be found in the applicable Environmental Baseline Survey for Transfer (EBST) and/or RCRA Facility Investigation Report (RFI) for this facility.*

Notice of Hazardous Substance Storage*/Release for Non-Airfield Parcel
Naval Support Activity Mid-South, Millington, Tennessee**

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation (CERCLA or "Superfund") 42 U.S.C. section 9620(h).

Quitclaim Deed #	Applicable Location(s)	Approximate Area (acres)	Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lbs)	Dates of Storage/Release
6	AOC A (including SWMUs 18, 26, 44 and 64 within AOC A footprint)	11.45	Trichloroethene**	TCE Trichloroethylene	79-01-6	Unknown	1940s to 1990s
			1,1,1-Trichloroethane**	1,1,1-TCA Methyl chloroform Trichloromethylmethane	71-55-6	Unknown	
			Carbon Tetrachloride**	Tetrachloromethane	56-23-5	Unknown	
			Methylene Chloride**	Dichloromethane Methylene dichloride	75-09-2	Unknown	
			Benzene**	Benzol Cyclohexatriene	71-43-2	Unknown	
			Xylenes**	Dimethylbenzene	1330-20-7	Unknown	
			Lead**	NA	7439-92-1	Unknown	
			Cadmium	NA	7440-43-9	Unknown	
			Nickel	NA	7440-02-0	Unknown	
7	None						
8	None						

**This notice includes only hazardous substances known to have been stored or released (release noted by **) in excess of reportable quantities, based on a complete search of agency files, in accordance with the requirements of 40 CFR Part 373. Information regarding constituents that have been detected in soil and groundwater, but for which records do not indicate storage, release or disposal in excess of reportable quantities can be found in the applicable Environmental Baseline Survey for Transfer (EBST) and/or RCRA Facility Investigation Report (RFI) for this facility.*

Summary of Response Actions Taken
Naval Support Activity Mid-South, Millington, Tennessee

An Initial Assessment Study (IAS) was completed at the former Naval Air Station (NAS) Memphis in 1983. Based on information from historical records, aerial photographs, field inspections and personnel interviews, twelve (12) potentially contaminated sites were identified. The IAS concluded that five of those sites warranted further investigation under the Navy Assessment and Control of Installation Pollutants (NACIP) Program. Sediment, soil, and groundwater samples were collected at these sites during the NACIP Confirmation Study/Verification Phase (CS/VP) which was conducted in 1984 and 1985. The CS/VP report recommended additional sampling at each of the sites.

NAS Memphis received RCRA Permit No. TN2-170-022-600 from USEPA Region IV in September 1986. The Hazardous and Solid Waste Amendments (HSWA) portion of the permit (HSWA-TN002) required NAS Memphis to conduct a RCRA Facility Assessment (RFA) to identify all active and inactive SWMUs on the facility. The Draft RFA report submitted in 1987 and finalized in 1990 identified 58 potential SWMUs and recommended 34 for additional study. Since then, eight more sites have been added and a formerly identified site has been divided into two sites, bringing the total number of SWMUs to 67. In September 1996, the Tennessee Department of Environment and Conservation (TDEC) issued a permit modification (Installation Identification Number TN2 17 002 2600; Permit Number TNHW-094) to add the new SWMUs and Area of Concern (AOC) A, the Northside Fluvial Groundwater. Thus, there are 67 SWMUs and one AOC listed in the current permit. Fifty-three of the 68 sites required investigation.

As a result of the Base Closure and Realignment Act (BRAC) of 1990, in October 1993 a portion of the former Naval Air Station was deemed as excess property to be disposed. Thirty-two of the SWMUs (30 of which required investigation) and the AOC were located on the property to be transferred under BRAC. In 1994 an Environmental Baseline Survey (EBS) was conducted which color-coded areas into one of seven classifications which identified the environmental condition of the property. Sixteen additional sites were identified as "Gray Area Sites": sites where additional information was required in order to classify the environmental condition of the property.

Since 1990, a combination of Confirmation Sampling Investigations (CSIs), RCRA Facility Investigations (RFI), Gray Area Sites Investigations, and Voluntary Corrective Actions (VCAs) have occurred. All of the SWMUs, the AOC, and the Gray Area Sites on BRAC property have been investigated.

Based upon the findings of the RFI report, it appears that the fluvial deposits groundwater beneath a portion of NSA Mid-South has been contaminated by widespread disposal of small quantities of chlorinated solvents at numerous locations. There are no water supply wells in the fluvial deposits aquifer on the base. There are two known fluvial wells within one mile of the base; one of which is not in use, the other a newly installed well for irrigation purposes. The affected fluvial deposits groundwater has been designated Area of Concern (AOC) A. Based on the maximum solvent concentration detected to date, the presence of dense non-aqueous phase liquids is not suspected.

The RFI also indicates that the loess groundwater beneath NSA Mid-South has been contaminated by petroleum releases from a former underground storage tank (UST) at Building N-12 and aircraft fire fighting training activities associated with SWMU 5. This groundwater is essentially unusable due to insufficient yield and poor water quality. Surface soil in the Turkey Shoot Area has been contaminated by lead shot from annual recreational shooting events. Separate Corrective Measures Studies (CMSs) are currently under way for the loess and fluvial deposits groundwater, and a removal is planned for the Turkey Shoot Area in November 1999.

The VCAs for the Non-Airfield parcel are listed in Table 1. Based on the findings of the above mentioned investigations and the VCAs, the Non-Airfield sites listed in Table 2 require further action.

Table 1 – Summary of Voluntary Corrective Actions on Sites in the Non-Airfield Parcel

Quitclaim Deed #	Site/Facility	Year	Site/Facility Description	VCA Description
1	SWMU 8	1997/ 1998	Cemetery Disposal Area (note: approximately half of SWMU 8 is located within quitclaim deed # 1 – the remainder of SWMU 8 is located in the adjacent airfield property.	Removal in 1997 of approximately 240 cubic yards of stockpiled pesticide-contaminated soil, and the removal in 1998 of 138 buried ethylene oxide cylinders.
2	SWMU 1	1996	Fire Department Drill Area	Removal of 10 cubic yards of stockpiled soil contaminated with petroleum and pesticides.
3	SWMU 60	1997	Northside Landfill	Removal of approximately 230 cubic yards of petroleum-contaminated soil.
	Tank 339	1998	North Fuel Farm (Tanks 336 & 337)	Removal of approximately 300 cubic yards of petroleum-contaminated soil.
4	SWMU 5	1997	Aircraft Fire Fighting Training Area	Removal of a 75'-diameter concrete fire mat, several small, concrete fire extinguisher training pits, and approximately 3,000 cubic yards of petroleum-contaminated soil.
6	N-122	1995	Acetylene General Building	Removal of approximately 2 cubic yards of petroleum-contaminated soil as a result of the gray area investigation.
	SWMU 18	1996	N-112 Underground Waste Tank	Removal of a 550-gallon waste oil tank and approximately 45 cubic yards of petroleum-contaminated soil during the first phase of the VCA. Additional soil was removed in 1998.
	SWMU 18	1998	N-112 Underground Waste Tank	Removal of approximately 100 cubic yards of additional petroleum-contaminated soil during the second phase of the VCA.
	SWMU 44	1998	N-102 Hazardous Waste Accumulation Point	Removal of approximately 12 cubic yards of petroleum-contaminated soil.
7	SWMU 66	1996	Radar Area Dump	Removal of empty 55-gallon drums and other non-hazardous debris.
	SWMU 67	1996	Horse Pasture Dump	Removal of scrap metal, wood, and other non-hazardous debris.

Notes:

AST - Aboveground Storage Tank
BRAC - Base Realignment and Closure
OL - Open land
PAH - Polynuclear Aromatic Hydrocarbon
SVOC - Semi-Volatile Organic Compound
SWMU - Solid Waste Management Unit
VCA - Voluntary Corrective Action

Table 2 – Identified Areas of Hazardous Substance or Petroleum Contamination Requiring Further Action Within Non-Airfield Parcel

Quitclaim Deed #	Facility	Description	BRAC Classification	Media /Contaminant of Concern	Approx Area	Status
1				none		
2	AOC A	Northside Fluvial Groundwater	6(Red)	fluvial GW contaminated with chlorinated solvents	42 acres	Corrective Measures Study in progress – scheduled completion in 2000.
3	OL-009	Turkey Shoot Area	6(Red)	surface soil contaminated with lead	0.63 acres	Removal of an estimated 325 cubic yards of lead-contaminated soil is planned for February 2000.
4	SWMU 5	Aircraft Fire Fighting Training Area	6(Red)	Loess groundwater contaminated with benzene; Fluvial groundwater contaminated with carbon tetrachloride	3.17 acres	Remedial options for both loess and fluvial contaminated being evaluated under Corrective Measures Studies – scheduled completion in 2000.
5				none		
6	N-12	Former AIMD GSE Building	6(Red)	Loess groundwater contaminated with benzene	0.5 acre	Remedial options being evaluated under the Loess Corrective Measures Study.
	AOC A	Northside Fluvial Groundwater	6(Red)	fluvial GW contaminated with chlorinated solvents	11.45 acres	Corrective Measures Study in progress – scheduled completion in 2000.
7				none		
8				none		

Notes: AIMD - Aircraft Intermediate Maintenance Department
 BCT - BRAC Cleanup Team
 CMS - Corrective measures study
 OL - Open land
 UST - Underground storage tank

AOC - Area of Concern
 BRAC - Base Realignment and Closure
 GW - Groundwater
 SWMU - Solid waste management unit

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “J”

**LAND USE CONTROL
IMPLEMENTATION PLAN
(LUCIP)**

**LAND USE CONTROL IMPLEMENTATION PLAN
FOR
NON-AIRFIELD PARCEL
NAVAL SUPPORT ACTIVITY (NSA) MID-SOUTH
MILLINGTON, TENNESSEE**

Background: This Land Use Control Implementation Plan (LUCIP) shall apply to the Non-Airfield Parcel at NSA Mid-South which is to be conveyed with certain specific land and groundwater use restrictions to the City of Millington Industrial Development Board (MIDB) for purposes of community redevelopment. Those restrictions are necessary because certain areas of hazardous substance and petroleum contamination will remain on-site after transfer. Some of these areas require no further remediation because they meet applicable federal and State environmental cleanup standards assuming industrial /commercial reuse of the property while at others, the Department of the Navy (Navy) is still conducting certain environmental investigation and remediation activities.

This Plan was developed by the NSA Mid-South BRAC Cleanup Team (BCT) after taking into consideration U.S. EPA's interim final guidance "Institutional Controls and Transfer of Property Under CERCLA 120(h)(3)(A),(B) or (C)" (Mar 99); the Department of Defense's "A Guide to Establishing Institutional Controls at Closing Military Installations" (Feb 98), and the Department of the Navy's "Environmental Policy Memorandum 99-02; Land Use Controls" (May 99). The BCT consists of representatives from U.S. EPA Region 4, the Tennessee Department of Environment and Conservation (TDEC), and the Navy.

As defined in the above referenced guidance documents, land use controls (LUCs) are both engineered and non-engineered (i.e., institutional) measures intended to affect human activities in such a way as to prevent or reduce exposure to hazardous substances. Examples of institutional controls cited in the preamble to U.S. EPA's 1990 National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), include land and water use restrictions, well-drilling prohibitions, building permits, well use advisories and deed notices. They are usually, but not always, legal controls. For example, providing risk information to potential site users could be considered a form of institutional control. However, institutional controls are distinct from physical engineering measures such as treatment and containment systems.

Pursuant to the Base Closure and Realignment Act of 1988 (Public Law 100-526), the Navy has the authority to impose restrictions on the future use of those surplus properties being made available for community reuse at closing or realigning Navy installations. In transferring restricted-use property, the Navy has a perpetual interest in insuring that restrictions remain viable and are honored by all subsequent owners and users of the

transferred property. This interest is based, in part, upon those deed covenant and indemnification obligations assumed by the Navy under CERCLA Section 120(h)(3) and Section 330 of the Fiscal Year 1992 National Defense Authorization Act (Public Law 102-484), respectively. Under Section 330, the Navy must indemnify all future owners or users of such property against response costs, personal injury and property damage attributable to any remaining hazardous substance or petroleum contamination. By ensuring that all necessary LUCs remain viable, the Navy will ensure future protection of human health and the environment while limiting its exposure to future cost liabilities.

LUC Goals: The goals of the LUCs to be implemented on all or portions of the Non-Airfield parcel being transferred to the MIDB are to protect human health and the environment by:

1. Preventing the exposure/consumption of groundwater that exceed Federal Maximum Contaminant Levels (MCLs) and State groundwater guidance concentrations;
2. Limiting exposure to surface and subsurface soils that may present unacceptable risk;
3. Maintaining the integrity of any existing or future monitoring or remediation systems; and
4. Preventing the downward migration of shallow contamination into deeper uncontaminated aquifers, and preventing the induced lateral migration of contamination.

Necessary LUCs: For those areas reflected in Attachment 1, the following specific LUCs will be implemented by the Navy on the Non-Airfield Parcel:

1. Property Use Restrictions: The environmental remediation goals developed by the BCT for the Non-Airfield Parcel take into account the intended reuses of the property as reflected in the Millington Base Reuse Committee's approved Reuse Plan. As such, residential or residential-like uses (including housing, daycare, playgrounds or schools) will not be allowed on the property except in the 46.9 acre area immediately north of the former Navy hospital..
2. Groundwater Related Restrictions: The installation of any well for the extraction of groundwater from the Memphis Sands or any deeper aquifer underlying the property will not be prohibited on the requisite conditions that the well is double-cased and grouted, is installed in a manner to preclude the potential for downward migration of contamination into the deeper aquifer(s), is not located in Background Well Cluster # 5 or AOC A areas, and has prior written authorization from the Navy and approval from the Memphis-Shelby County Public Health Department. In the areas of Background Well Cluster #5 and AOC A, depicted in Attachment 1, the installation of any such wells is prohibited.

Additionally, the disturbance of those groundwater monitoring and/or remediation systems (including pumps, wells, piping, utilities and associated appurtenances) currently located or later to be installed on the property by the Navy will also be prohibited.

3. Soil Related Restrictions / Notices: The excavation, drilling, or other disturbance of soils within either the former disposal area (SWMU 8) or landfill (SWMU 60) lying with the Non-Airfield Parcel will be prohibited without prior approval from the Navy. The excavation, drilling, or other disturbance of soils in two areas with known subsurface and groundwater petroleum contamination (SWMU 5 and N-12) will also be prohibited, until such time as the Navy completes the Corrective Measures Study and possible Corrective Measures Implementation. Although no specific use restriction(s) are necessary to ensure future protection of human health and the environment, a separate notification will be provided to the MIDB as to those areas reflected in Attachment 1, where residual petroleum contamination in soils may be present above 100 TPH. The provision of such a notice is appropriate given that certain soil characterization and disposal requirements may apply under TDEC regulations if any soils in those areas are to be removed for disposal off-site.

LUC Implementation: To effectuate the aforementioned property reuse, groundwater and soil related restrictions, certain restrictive covenants will be included in the deeds which shall convey to the MIDB, those parcels where such restrictions must be adhered to in order to ensure future protection of human health and the environment. Each contaminated area to which one or more LUCs shall apply, will be surveyed and metes and bounds established for purposes of future site identification. Each deed shall be recorded in accordance with Tennessee real property law and be drafted so that such restrictions shall "run with the land." After execution by the Navy of the requisite Finding of Suitability to Transfer (FOST) for this property but prior to actual deed recordation, the Navy will provide U.S.EPA and TDEC with a courtesy draft copy of each deed prepared so that they may have the opportunity to review all LUC related provisions.

In addition to the above delineated use restrictions, the following general LUC implementation and maintenance related requirements will be incorporated into each of the deeds (except as otherwise specified below) which will convey the Non-Airfield Parcel to the MIDB:

1. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that in the event the MIDB or such other party(ies) desires to use the property (other than the property conveyed by Quitclaim Deed #8) for any use other than industrial or commercial use, then the MIDB or such other party(ies) shall perform, at its / their sole cost and expense, all additional environmental remediation required by law or applicable regulatory authorities for such other uses and shall further comply with all laws, rules, regulations and ordinances pertaining thereto. Permissible industrial or commercial uses shall also include office, recreational or similar use incidental to the aforementioned uses if such incidental

use is permitted by cognizant regulatory authorities without requiring further environmental remediation beyond that required for industrial or commercial use of the property

2. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that it will (i) provide written notice to the United States of its intent to use the property (other than the property conveyed by Quitclaim Deed #8) for anything other than industrial or commercial use (ii) provide a description of its plans for undertaking any environmental investigation and/or cleanup activities necessary to permit such a change in land usage, and (iii) ensure that such activities will not conflict with any ongoing or future remedial activities to be taken by the United States or in any way serve to adversely affect any remedial remedies previously put in place by the United States on the property;
3. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that it shall comply with the provisions of any health and safety plan put into effect by the United States in connection with any ongoing or future environmental investigative and/or remedial activities to be undertaken by the United States on the property;
4. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that it shall not hinder or prevent the United States from constructing, upgrading, operating, maintaining and monitoring any groundwater treatment facilities and groundwater monitoring network or engage in any activity that will disrupt or hinder further remedial investigation, response actions or oversight activities on the Property or adjoining property;
5. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that it shall provide written notice to the United States of any subsequent sale, assignment or lease of the property, or any portion thereof, and provide contact information concerning the new owner or occupant;
6. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that it shall provide annual written certifications to the United States regarding continued compliance with the LUCs implemented through transfer deed recordation.
7. In the event the MIDB, or any subsequent or successive successor or assign (each hereinafter called a "Transferor") shall convey any of the property by deed and in said conveyance shall impose upon the party to whom the property is transferred (the "Transferee") the foregoing general LUC implementation and maintenance related requirements, duties and obligations, then the Transferee, its successors and assigns shall be bound by such requirements, duties and obligations and the Transferor shall thereafter have no further responsibility with respect thereto.

LUC Maintenance: Continued maintenance and oversight of those specific LUCs to be implemented via deed recordation will be effected through use of a layering strategy. As part of that strategy the Navy or its transferees will undertake the following specific actions:

1. Prior to deed transfer the Navy will brief representatives from both the Memphis-Shelby County Health Department and the City of Millington Planning Commission with regards to the elements of this LUCIP and solicit the support of those agencies in assisting the Navy to ensure future LUC compliance;
2. Prior to deed transfer the Navy will provide a final copy of this LUCIP to representatives from the U.S.EPA, TDEC, the MIDB, the Memphis-Shelby County Health Department and the City of Millington Planning Commission. The forwarding letter to be sent to the latter two agencies will request written confirmation from both that they will assist the Navy with LUCIP compliance to the extent such assistance can be provided within the purview of their respective regulatory responsibilities and authorities;
3. The Navy will include a complete description of each implemented LUC in the appropriate Statement of Basis (RCRA remedy decision document) pertaining to those sites undergoing RCRA corrective action;
4. Periodic physical inspections of the property to ensure that all LUCs are being complied with will be conducted by Navy personnel and reported to both U.S.EPA and TDEC at a frequency concurrent with the operation and/or monitoring reporting requirements of any / all remedial systems. If no remedial systems will be installed and operated on the property, at a minimum, physical inspections of the property will be performed by Navy personnel as part of the CERCLA 5-year review process for each site where hazardous substance contamination will remain in place. Required funding to perform such inspections will be programmed and budgeted on annual basis via established Navy budgetary channels.
5. As noted above, subsequent owners will be required by deed to report annually at their sole expense to the Navy with copies to U.S. EPA and TDEC, confirming that the LUCs implemented on the property are being complied with. A sample LUC Compliance Certification form is provided as Attachment 2 to this LUCIP. The actual form of annual LUC Compliance Certification required for each property will be tailored to conform to the LUCs which are applicable to that property. Each form will cover a reporting period of one year beginning 1 January and ending 31 December. It will be required that the certifications be submitted by 1 March of the year following the reporting period.

LUC Enforcement: Should any subsequent owner or user of the property fail to comply with any LUC implemented by the Navy, the Navy will pursue all appropriate legal avenues available to it to remedy any such non-compliances. Those avenues range from informal resolutions with the owner or violator, to the institution of judicial action under

the auspices of State property law or CERCLA. Alternatively, should the circumstances warrant such, the Navy could choose to exercise its response authorities under CERCLA then seek cost recovery after the fact from the person(s) or entity(ies) who violated a given LUC.

In addition to those enforcement avenues which the Navy itself could directly and independently pursue, the Memphis-Shelby County Health Department and the City of Millington Planning Commission have certain independent zoning and well permitting enforcement authorities which could be exercised against any LUC violator. Should the Navy become aware that any future owner or user of the property has violated any deed covenant requirement over which either of these agencies may have such independent jurisdiction, (e.g., the installation of a non-permitted well or change in land use inconsistent with established zoning requirements), the Navy will promptly notify these agencies of such violation(s) and work cooperatively with them to re-achieve owner/user compliance with LUCIP requirements.

LUC Modification / Termination: Those LUCs or individual elements of those LUCs to be imposed by deed recordation may be modified and/or terminated as provided below:

1. Non-residential Use: The deed restriction to be imposed against future residential use of the property will remain in place for perpetuity unless otherwise removed by the Navy per agreement with the then current owner of the property, U.S.EPA and/or TDEC. In such cases, the requesting property owner will be solely responsible for undertaking, at its sole expense, any additional site investigative and remedial activities required by U.S.EPA and/or TDEC in connection with allowing the desired reuse.
2. Groundwater: The length of time the deed prohibition against the extraction or use of groundwater from the loess and fluvial deposits aquifer shall remain in effect depends upon the length of time needed to remediate those groundwaters. Once confirmatory sampling has demonstrated groundwater monitoring is no longer required and applicable cleanup goals have been met, that specific LUC can be removed by the Navy with U.S.EPA and/or TDEC concurrence as part of the RCRA/CERCLA site close-out process.

Those specific deed covenant prohibitions relating to the installation of any groundwater extraction wells will likewise remain in place until the cleanup goals for the loess and fluvial groundwater aquifers are achieved. As with the groundwater extraction or use prohibition, removal of this LUC will require U.S.EPA and/or TDEC concurrence. Because the permitting of water supply wells within the County falls under the purview of the Memphis-Shelby County Health Department, the Navy shall advise that agency upon the removal of this prohibition on any portion of the transferred property.

3. Soils: Those LUCs to be imposed in connection with the former disposal area (SWMU 8) and landfill (SWMU 60) will remain in place for perpetuity, unless removed by the Navy per agreement between the Navy, the then current property owner, U.S.EPA and/or TDEC. In such cases, the future property owner will be solely responsible for any additional cleanup activities required by applicable laws and regulations for the proposed activity.

The specific prohibition against the excavation, drilling, or other disturbance of soils the areas of known subsurface soils and groundwater petroleum contamination (SWMU 5) will remain in effect until the Navy completes all ongoing remedial activities and confirmatory sampling has demonstrated that applicable cleanup goals have been met. This LUC will be removed by the Navy with U.S.EPA and/or TDEC concurrence as part of the RCRA/CERCLA site closeout process

ATTACHMENT 2

Sample Annual LUC Compliance Certification

Property Owner: _____

Property Address: _____

This Certification covers the year 1 January _____ through 31 December _____.
(note: form must be submitted by 1 March of the year following the reporting period).

Owner Covenants

1. *The owner covenants that use of the property has been limited to nonresidential, industrial /commercial uses, or;*
2. *The owner covenants that has (i) provided written notice to the United States of its intent to use the property for something other than industrial /commercial use; (ii) provided a description of its plans for undertaking any environmental investigation and/or cleanup activities necessary to permit such a change in land usage; (iii) ensured that such activities did not conflict with any ongoing or future remedial activities to be under taken by the United States or in any way serve to adversely affect any remedial remedies previously put in place by the United States on the property, and; (iv) obtained release by the United States of the non-residential use restrictive covenant previously placed in the owner's deed or chain of title to the property*
3. *The owner covenants that it has not either constructed nor permitted another to construct any shallow water supply well, or extracted, used or allowed to be extracted or used, any ground waters from either the loess or fluvial aquifers lying beneath the boundaries of the Property for any purpose without having first obtained written approval from the Navy.*
4. *The owner covenants that it has not either constructed nor permitted another to construct any deep water supply well, or extracted, used or allowed to be extracted or used, any ground waters from the Memphis aquifer lying beneath the boundaries of the Property for any purpose without having first obtained approval of the Navy and the Memphis-Shelby County Health Department.*
5. *The owner covenants that it has complied with the provisions of any Health and Safety Plan put into effect by the United States in connection with any ongoing or future environmental investigative and/or remedial activities to be undertaken by the United States on the property.*
6. *The owner covenants that it has not hindered or prevented the United States from constructing, upgrading, operating, maintaining and monitoring any groundwater treatment facilities and groundwater monitoring network or engage in any activity that will disrupt or hinder further remedial investigation, response actions or oversight activities on the Property or any adjoining property(ies).*
7. *The owner covenants that it has provided written notice to the United States of any sale, assignment or lease of the property, or any portion thereof, and provided contact information concerning the new owner or occupant.*

I, the undersigned, certify that I am an authorized representative of the above named property owner. I hereby certify that the above identified deed covenants as applicable, have been complied with for the period noted.

date

signature

mail completed forms to:

Southern Division
Naval Facilities Engineering Command
PO Box 190010
North Charleston, SC 29419-0010

U.S. Environmental Protection
Agency
Region IV
61 Forsyth Street
Atlanta, GA 30303

Tennessee Department of
Environment and Conservation
Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mt. Moriah
Memphis, Tennessee 38115-1520

FINDING OF SUITABILITY TO TRANSFER
NON-AIRFIELD PARCEL
NSA MID-SOUTH, MILLINGTON, TENNESSEE

EXHIBIT “K”

**CORRESPONDENCE/
RESPONSE TO
COMMENTS**



DEPARTMENT OF THE NAVY

SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
P.O. BOX 190010
2159 EAGLE DRIVE
NORTH CHARLESTON, S.C. 29419-0010

Code 18B2
12 November 1999

Mr. Jim Morrison
Tennessee Department of Environment and Conservation
Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mt. Moriah
Memphis, TN 38115-1520

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Dear Mr. Morrison:

Thank you for your comments on the subject FOST, submitted by electronic mail on 12 November 1999. Specific responses to your comments are provided below:

Comment: *As will be noted more specifically later, TDEC notes that the residual petroleum contamination issue that has been discussed on several occasions does not appear to be resolved at this time. As the Navy is aware, one of the principle purposes of BRAC was to clean up properties for "reuse". TDEC is aware that property negotiations have occurred between the City of Millington and the Navy that mitigate the necessity to clean up some of the residual contamination left behind at the former NAS Memphis Facility before transfer (i.e. non-friable asbestos remaining in some of the old structures). However, it is unclear to TDEC whether or not these negotiations included the additional costs that may be incurred associated with the characterization and disposal of petroleum contaminated soils once they are disturbed for purposes of "reuse". If the property transfer negotiations included the above noted additional costs, then the issue is resolved to the satisfaction of TDEC with respect to the Navy's future liability for the cleanup. However, if these additional costs for petroleum cleanup were not factored into the property transfer negotiations, then it is TDEC's position that the Navy is liable for all future costs associated with the characterization and disposal of these contaminated soils upon their disturbance for the purposes of "reuse." The basis for this position is: Suppose, the Navy elected to keep this property and decided to reuse it for a building site. At the time the Navy began to disturb the soil for this reuse purpose, and noted or knew of contamination present at this site. The Navy would be responsible for the characterization of the soil to determine if that soil needed any additional disposal requirements.*

Response: Your comments regarding the petroleum issue will be included in the FOST, Exhibit "K".

Comment: *TDEC is also concerned that none of the property is designated "White" in the Non-Airfield FOST. Although TDEC is aware and understands the Navy's concern over Dieldrin in surface soil, it is not accurate to indicate that the Dieldrin contamination resulted from "storage, release, migration, and/or disposal activities" as suggested by the "light green color" designation. Due to the low contaminant levels detected in base wide soils, and the fact that TDEC is under the impression that this soil contamination was the result of "normal" pesticide applications, it is excluded as a contaminant of regulatory concern. As was discussed in the August meeting between the Navy, City of*

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Millington, TDEC, and EPA, the need to place notification/restrictive covenants on properties with no known environmental problems places an undue burden on the City of Millington IDB in its efforts to make this a viable business development. The concerns over Dieldrin in surface soils can be addressed, but the lack of a White classification is troubling. TDEC notes that the "light green color" designated to all of the Northside transferable property should have been used more judiciously.

Response: From the initial stages of the BRAC process, it was known that the intended reuse of the property was for industrial purposes. This knowledge formed the basis for the investigative approach undertaken by the BRAC Cleanup Team, and was a decision reached by consensus by team members, including TDEC. It was determined that the level of sampling and effort required to prove a "white" classification to TDEC was unjustifiable given the known past uses of the facility and the intended reuse by the city. The BRAC Cleanup Team's consensus was to classify the property as "light green", as it acknowledged that the property was not pristine, but did not preclude transfer or interfere with the intended reuse.

Comment: *Section 4.0 (b), third full paragraph, page 4 of 14. To avoid any potential ambiguity, TDEC strongly suggests replacement of the sentence, which begins "This notice..." with the following:*

This notice will be provided because a disturbance of soils in the areas of suspected residual contamination from the petroleum releases could lead to generation of a solid waste. Petroleum-contaminated soils are exempt from the regulatory definition of solid waste if below 100 ppm TPH; otherwise, the soils are considered a solid waste. The soils in these areas may exhibit characteristics such as odor or staining, and thereby provide a basis for further characterization through sampling and analysis. On-site disposal is not allowed unless the soils are treated to below 100 ppm TPH. Soils above 100 ppm are to be handled as a special waste for disposal at a permitted facility. The 1,000 ppm soil clean up standard applied as an ARAR from the TDEC-UST program was based on the permeability of undisturbed soil, and is not relevant to the issue of the regulatory status of disturbed soil.

Response: Given the lack of a written policy from TDEC on this issue, the Navy feels that the current wording in the FOST is sufficient.

Comment: *Section 4.0 (b), Table 2, page 4 of 14. This table notes that SWMU 5 and site N-12 have a BRAC classification of red. However, in Exhibit B, the Environmental Condition of Property Map notes these as dark green. Please clarify.*

Response: The classification of SWMU 5 and N-12 are red due to groundwater contamination. The Environmental Condition of Property Map indicates areas with groundwater contamination (such as SWMU 5 and N-12) with a red cross-hatched overlay (overlying the surface and subsurface soil classification). This system of layering allows for the portrayal of more information on the map; however, the "worst" color takes precedence when describing the overall condition of the property.

Comment: *Table 6, page 9 of 14. There is a reference in the caption to "40 CRF"; it should be "40 CFR".*

Response: Text in the table has been changed as noted.

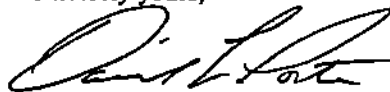
SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Comment: *Table 6, page 9 of 14, SWMU 8. This area had pesticide-contaminated soils placed there. It should be noted here under known substances.*

Response: Dieldrin-contaminated soil was remediated (removed and disposed) at SWMU 8; however, a calculation of the volume removed indicates that it does not warrant reporting under 40 CFR Part 373 (i.e., the total quantity removed was calculated to be less than one pound – the “reportable quantity” for dieldrin).

Thank you for your efforts in this matter, and please contact me at (803) 820-5610, email: porterdl@efdsouth.navfac.navy.mil, should you have any questions.

Sincerely yours,



David L. Porter, P.E.
BRAC Environmental Coordinator
NSA Mid-South

Copy to: Ms. Tonya Barker
Naval Support Activity Mid-South
Code 0101
5720 Integrity Drive
Millington, TN 38054-5045

Mr. Brian Donaldson, Remedial Project Manager
U.S. Environmental Protection Agency
Region IV
Code BD/FFB/BRAC
61 Forsyth Street
Atlanta, GA 30303

Comments received via electronic mail on 12 November 1999 from:
Mr. Jim Morrison, Remedial Project Manager
Tennessee Department of Environment and Conservation
Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mt. Moriah
Memphis, Tennessee 38115-1520

General Comments:

The organization of both the Airfield and Non-Airfield FOSTs, specifically the use of tables in them to make the types of contamination located on the different parcels is very clear. Good job Mr. Porter, it is very well done.

As will be noted more specifically later, TDEC notes that the residual petroleum contamination issue that has been discussed on several occasions does not appear to be resolved at this time. As the Navy is aware, one of the principle purposes of BRAC was to clean up properties for "reuse". TDEC is aware that property negotiations have occurred between the City of Millington and the Navy that mitigate the necessity to clean up some of the residual contamination left behind at the former NAS Memphis Facility before transfer (i.e. non-friable asbestos remaining in some of the old structures). However, it is unclear to TDEC whether or not these negotiations included the additional costs that may be incurred associated with the characterization and disposal of petroleum contaminated soils once they are disturbed for purposes of "reuse". If the property transfer negotiations included the above noted additional costs, then the issue is resolved to the satisfaction of TDEC with respect to the Navy's future liability for the cleanup. However, if these additional costs for petroleum cleanup were not factored into the property transfer negotiations, then it is TDEC's position that the Navy is liable for all future costs associated with the characterization and disposal of these contaminated soils upon their disturbance for the purposes of "reuse." The basis for this position is: Suppose, the Navy elected to keep this property and decided to reuse it for a building site. At the time the Navy began to disturb the soil for this reuse purpose, and noted or knew of contamination present at this site. The Navy would be responsible for the characterization of the soil to determine if that soil needed any additional disposal requirements.

TDEC is also concerned that none of the property is designated "White" in the Non-Airfield FOST. Although TDEC is aware and understands the Navy's concern over Dieldrin in surface soil, it is not accurate to indicate that the Dieldrin contamination resulted from "storage, release, migration, and/or disposal activities" as suggested by the "light green color" designation. Due to the low contaminant levels detected in base wide soils, and the fact that TDEC is under the impression that this soil contamination was the result of "normal" pesticide applications, it is excluded as a contaminant of regulatory concern. As was discussed in the August meeting between the Navy, City of Millington, TDEC, and EPA, the need to place notification/restrictive covenants on properties with no known environmental problems places an undue burden on the City of Millington IDB in its efforts to make this a viable business development. The concerns over Dieldrin in surface soils can be addressed, but the lack of a White classification is troubling. TDEC notes that the "light green color" designated to all of the Northside transferable property should have been used more judiciously.

Specific Comments:

1. Section 4.0 (b), third full paragraph, page 4 of 14.

To avoid any potential ambiguity, TDEC strongly suggests replacement of the sentence, which begins "This notice..." with the following:

This notice will be provided because a disturbance of soils in the areas of suspected residual contamination from the petroleum releases could lead to generation of a solid waste. Petroleum-contaminated soils are exempt from the regulatory definition of solid waste if below 100 ppm TPH; otherwise, the soils are considered a solid waste. The soils in these

areas may exhibit characteristics such as odor or staining, and thereby provide a basis for further characterization through sampling and analysis. On-site disposal is not allowed unless the soils are treated to below 100 ppm TPH. Soils above 100 ppm are to be handled as a special waste for disposal at a permitted facility. The 1,000 ppm soil clean up standard applied as an ARAR from the TDEC-UST program was based on the permeability of undisturbed soil, and is not relevant to the issue of the regulatory status of disturbed soil.

2. Section 4.0 (b), Table 2, page 4 of 14.

This table notes that SWMU 5 and site N-12 have a BRAC classification of red. However, in Exhibit B, the Environmental Condition of Property Map notes these as dark green. Please clarify.

3. Table 6, page 9 of 14.

There is a reference in the caption to "40 CRF"; it should be "40 CFR".

4. Table 6, page 9 of 14, SWMU 8.

This area had pesticide-contaminated soils placed there. It should be noted here under known substances.



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
MEMPHIS ENVIRONMENTAL FIELD OFFICE
SUITE E-645, PERIMETER PARK
2510 MT. MORIAH ROAD
MEMPHIS, TENNESSEE 38116-1520**

November 10, 1999

Mr. David Porter
Southern Division, Naval Facilities Engineering Command
2155 Eagle Drive, PO Box 10068
Charleston, SC 29411-0068

Re: TDEC Comments:
• Draft Finding of Suitability to Transfer (FOST) Non-Airfield, (October, 1999)
• Draft Finding of Suitability to Transfer (FOST), Airfield (October, 1999)
For Naval Support Activity Mid-South, Millington, Tennessee, DSF #79-719, cc 82

Dear Mr. Porter:

The Tennessee Department of Environment and Conservation (TDEC), Division Superfund (DSF) Environmental Assistance Center - Memphis (EAC-M) has reviewed the above noted documents for the NAS Memphis Site (#79-719). Both general and specific comments regarding these documents are attached to this communiqué.

Should you have any questions or concerns regarding these approvals please call me at (901) 368-7958.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. W. Morrison", is written over the typed name and title.

James W. Morrison, P.G.
Assistant Manager, DSF
Environmental Assistance Center - Memphis
Tennessee Division of Superfund

c: DSF, NCO, File
DSF, EAC-M, File
Brian Donaldson
United States Environmental Protection Agency
Region 4
Federal Facilities Branch
Atlanta Federal Center
100 Alabama Street, S.W.
Atlanta, GA 30303-3104

TDEC Comments on Both Airfield and Non-Airfield FOSTS.

General Comments:

The organization of both the Airfield and Non-Airfield FOSTs, specifically the use of tables in them to make the types of contamination located on the different parcels is very clear.

TDEC notes that the issue on who is responsible for the residual petroleum contamination at NAS Memphis, discussed on several occasions, does not appear to be resolved at this time. As the Navy is aware, one of the principle purposes of BRAC was to clean up these surplus properties for "reuse". TDEC is aware that property negotiations have occurred between the City of Millington and the Navy that mitigate the necessity to clean up some of the residual contamination left behind at the former NAS Memphis Facility before transfer (i.e. non-friable asbestos remaining in some of the old structures). However, it is unclear to TDEC whether or not these negotiations specifically included the additional costs that may be incurred associated with the characterization and disposal of the remaining petroleum contaminated soils once they are disturbed for purposes of "reuse". If, the property transfer negotiations between the Navy and the City of Millington specifically included the above noted additional cleanup costs, then the issue of the Navy's future responsibility for cleanup costs is resolved. However, if the additional cost for petroleum cleanup was not factored into the property transfer negotiations, then it is TDEC's position that the Navy is responsible for any and all future costs associated with characterization and possible disposal of these contaminated soils upon their disturbance for the purposes of "reuse."

The basis for TDEC's position on this issue is primarily due to the following lines of logic:

- 1.) Suppose that the Navy had elected to keep this property and decided to reuse it for a building site even after it had been cleaned up to the current TDEC permeability standards. (*When petroleum contaminated soil becomes disturbed, the TDEC permeability standard of 1000-ppm is no longer applicable; the 100-ppm cleanup standard would come in to effect.*) At the time the Navy began to disturb soil for the purpose of reuse and either knew of or suspected petroleum contamination present at that site, the Navy would be liable for additional characterization of the soil to determine whether or not the soil needed any additional disposal requirements. Under this scenario, at that time the Navy would be responsible for these additional costs anyway.
- 2.) From the very beginning of the BRAC process at NAS Memphis, and on numerous occasions since, Navy representatives have stated to both TDEC and City of Millington officials, that the Navy would always be responsible for cleanup of any residual contamination that was directly attributable to past NAS Memphis operations. It was with this understanding that TDEC, in good faith, has expedited the cleanup process for this federal facility. TDEC only asks that the Navy now honor its past statements and pledges to the local community and to the State of Tennessee in this matter. Moreover, it is not fair for the Navy to push these costs onto the local community in the "Eleventh Hour" of the property transfer process.

TDEC is also concerned that none of the property is designated "White" in the Non-Airfield FOST. Although TDEC is aware and understands the Navy's concern over Dieldrin in surface soil, it should be noted that it is not accurate to indicate that the Dieldrin contamination resulted from "storage, release, migration, and/or disposal activities" as suggested by the "light green color" designation. Due to the low contaminant levels detected in base wide soils, and the fact that TDEC is under the impression that this soil contamination was the result of "normal" pesticide applications, Dieldrin then becomes excluded as a contaminant of regulatory concern. As was discussed in the August meeting between the Navy, City of Millington, TDEC, and EPA, the need to place notification/restrictive covenants on properties with no known environmental problems places an undue burden on the City of Millington IDB in its efforts to make this a viable business development. The concerns over Dieldrin in surface soils can be addressed, but the lack of a White classification is troubling. TDEC notes that the "light green color" designated to all of the Northside transferable property should have been used more judiciously.

Specific Comments:

Non-Airfield FOST:

1. Section 4.0 (b), third full paragraph, page 4 of 14.

To avoid any potential ambiguity, TDEC strongly suggests replacement of the sentence, which begins "This notice..." with the following:

This notice will be provided because a disturbance of soils in the areas of suspected residual contamination from the petroleum releases could lead to generation of a solid waste. Petroleum-contaminated soils are exempt from the regulatory definition of solid waste if below 100-ppm TPH; otherwise, the soils are considered a solid waste. The soils in these areas may exhibit characteristics such as odor or staining, and thereby provide a basis for further characterization through sampling and analysis. On-site disposal is not allowed unless the soils are treated to below 100 ppm TPH. Soils above 100 ppm are to be handled as a special waste for disposal at a permitted facility. The 1,000-ppm soil clean up standard applied as an ARAR from the TDEC-UST program was based on the permeability of undisturbed soil, and is not relevant to the issue of the regulatory status of disturbed soil.

2. Section 4.0 (b), Table 2, page 4 of 14.

This table notes that SWMU 5 and site N-12 have a BRAC classification of red. However, in Exhibit B, the Environmental Condition of Property Map notes these as dark green. Please clarify.

3. Table 6, page 9 of 14.

There is a reference in the caption to "40 CRF"; it should be "40 CFR".

4. Table 6, page 9 of 14, SWMU 8.

This area had pesticide-contaminated soils placed there. It should be noted here under known substances.

Airfield FOST:

1. Section 4.0 (b), second paragraph full paragraph,

To avoid any potential ambiguity, TDEC strongly suggests replacement of the sentence, which begins "This notice..." with same wording as suggested in the above Non-Airfield FOST comment 1.

2. Section 4.0 (b), Table 2,

The SWMU 15 BRAC classification here is noted as yellow. Should not this SWMU also be designated as red since it is also contaminated with benzene in loess and will be falling under the Loess CMS, as is SWMU 5? Also, should not the adjacent North Fuel Farm be also noted here in this table for similar reasons? Please clarify if appropriate.

3. This document did not have an Environmental Condition of Property Map included with it in Exhibit B. Please include it with final version with any changes that need to be incorporated as a result of the above general and specific comments.

Post-It® Fax Note	7671	Date	# of pages 3
To D. Porter		From J. Morrison	
Co./Dept. Southd.		Co. TDEC	
Phone # 843-820-5610		Phone # 901-368-7958	
Fax # 843-820-5563		Fax # 901-368-7979	



DEPARTMENT OF THE NAVY

SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
P.O. BOX 190010
2155 EAGLE DRIVE
NORTH CHARLESTON, S.C. 29419-0010

Code 18B2
09 November 1999

Mr. Brian Donaldson, Remedial Project Manager
U.S. Environmental Protection Agency
Region IV
Code BD/FFB/BRAC
61 Forsyth Street
Atlanta, GA 30303

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Dear Mr. Donaldson:

Thank you for your prompt review and provisional concurrence with the subject FOST. Specific responses to your comments in your letter of 8 November 1999 are provided below:

Comment: *Groundwater at background well cluster number 5 is contaminated by tetrachloroethylene at levels above MCLs. It is EPA's view that, since the groundwater at this location is likely to require further characterization and remediation, it is inappropriate to give the statutorily-mandated covenant under CERCLA § 120(h)(3)(A)(ii)(I), that all remedial action necessary to protect human health and the environment has been taken. This covenant must be given at the time of transfer, or else deferred, with approval of the Governor, under the Covenant Deferral Request procedures of CERCLA § 120(h)(3)(C). Since neither avenue is being taken with regard to the property at well cluster number 5, the transfer is premature. EPA notes that the Land Use Control Implementation Plan (LUCIP) describes a system incorporating deed restrictions and local regulatory oversight by the Memphis-Shelby County Health Department in prohibiting the drilling of wells for any purpose in this area. This effort, while affording interim protection to users of the property, does not, at this time, satisfy all necessary remedial action.*

Response: Your concern regarding the area at background well cluster number 5 is noted, and your comment will be included in the FOST, Exhibit "K". Also, Tables 1 and 7 in the FOST have been edited to clarify that additional remedial action may be necessary, and that TDEC is pursuing this issue with the potentially responsible party through their Superfund program.

Comment: *FOST Table 1. This table should include Background Well Cluster #5 as an area requiring further action.*

Response: Tables 1 has been edited to clarify that additional remedial action may be necessary, and that TDEC is pursuing this issue with the potentially responsible party through their Superfund program.

Comment: *FOST Table 6. Pesticides were stock-piled at SWMU 8. This should be included in the known substances for Quitclaim Deed #1.*

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Response: Dieldrin-contaminated soil was remediated (removed and disposed) at SWMU 8; however, a calculation of the volume removed indicates that it does not warrant reporting under 40 CFR Part 373 (i.e., the total quantity removed was calculated to be less than one pound – the “reportable quantity” for dieldrin).

Comment: Page 11 of 14, last sentence. FDEP should be changed to TDEC.

Response: Text has been changed as noted.

Comment: FOST, Table 8. This should be revised to indicate that residential use is allowed for Parcel 8.

Response: Table has been changed as noted.

Comment: Exhibit I, Page 2, 1st paragraph. This paragraph states that there are no water supply wells in the fluvial deposits aquifer on or within one mile of the base. With the installation of the well at the new nursery near Highway 51 and Shipp Road, this statement should be changed. This new well is within one mile of the base and known fluvial deposits groundwater contamination. In addition, although the well on the McNamara property is not currently in use, it is a water supply well within one mile of the property boundary and should be mentioned in this paragraph.

Response: The text has been changed to read as follows: “There are no water supply wells in the fluvial deposits aquifer on the base. There are two known fluvial wells within one mile of the base; one of which is not in use, the other a newly installed well for irrigation purposes.”

Comment: Exhibit J, Land Use Control Implementation Plan (LUCIP), Groundwater Related Restrictions. The intention of the second sentence appears to be (1) to prohibit the drilling of wells through AOC A and near Background Well Cluster #5 into the Memphis Sands or deeper aquifers and (2) to allow drilling into the Memphis or deeper Aquifer elsewhere only if double-cased and grouted and installed in a manner to preclude the potential for downward migration of contamination into deeper aquifer(s) and only with prior authorization of the Navy. The wording, however, is confusing. Please consider the following language in substitution:

The installation of any well for the extraction of groundwater from the Memphis Sands or any deeper aquifer underlying the property will not be prohibited on the requisite conditions that the well is double-cased and grouted, is installed in a manner to preclude the potential for downward migration of contamination into the deeper aquifer(s), is not located in Background Well Cluster #5 or AOC A areas, and has prior written authorization from the Navy. In the areas of Background Well Cluster #5 and AOC A, depicted in Attachment 1, the installation of any such wells is prohibited.

Response: The suggested language has been incorporated in the LUCIP.

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Comment: *Exhibit J, LUCIP, LUC Maintenance, p.4. EPA analyzes the suitability of the transfer based, in part, upon the viability of the layering scheme envisioned by the LUCIP. Written confirmation from, and not merely a request to, the Memphis-Shelby County Health Department and the City of Millington Planning Commission will evidence that viability. Conversations between the Navy, TDEC, EPA and the above agencies indicate that the local regulatory agencies will accept the responsibilities to monitor and enforce the land use restrictions within their purview.*

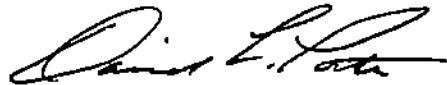
Response: Noted. Copies of confirmations from local agencies will be provided to EPA when received.

Comment: *EPA notes that, prior to its execution and recordation, the Navy will provide a draft copy of each deed to afford an opportunity to review the LUC-related provisions*

Response: Noted. Draft deeds will be forwarded for review when completed.

Thank you for your efforts in this matter, and please contact me at (803) 820-5610, email: porterdl@efdsouth.navfac.navy.mil, should you have any questions.

Sincerely yours,



David L. Porter, P.E.
BRAC Environmental Coordinator
NSA Mid-South

Copy to: Ms. Tonya Barker
Naval Support Activity Mid-South
Code 0101
5720 Integrity Drive
Millington, TN 38054-5045

Mr. Jim Morrison
Tennessee Department of Environment and Conservation
Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mt. Moriah
Memphis, TN 38115-1520

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November 9, 1999

EH263912945US

Commanding Officer, Southern Division,
Naval Facilities Engineering Command
(Attention: Code 18B2)
P.O. Box 190010
North Charleston, SC 29419-9010

VIA U.S. MAIL AND EXPRESS MAIL

RE: Transfer of NSA Mid-South BRAC Property, Millington, Tennessee

Dear Sirs:

On behalf of my client, the Industrial Development Board of the City of Millington ("IDB"), and pursuant to the Public Notice published in the *Commercial Appeal* on October 24, 1999, I am submitting the following written comments to the Draft Finding of Suitability to Transfer for the Non-Airfield Parcel, Naval Support Activity Mid-South, Millington, Tennessee ("FOST"):

1. In Table 4 and in Table 5, at pages 6 and 7 of the FOST, with respect to Quitclaim Deed No. 5, the references to Building N-207 should be corrected to read "N-208." (In point of fact, since Building N-208 has already been demolished, it would be more appropriate to delete both of these references in their entirety. With respect to Quitclaim Deed No. 6, the references in Tables 4 and 5 to Building N-12 should likewise more properly be deleted since such building has also been demolished.)

2. In Section 5.0 (b) of the FOST, please add a comma followed by "as set out in Table 6 below" at the end of the first sentence. The purpose of this change is to make the FOST more specific that it is those certain locations set out in Table 6 for which hazardous substance notices are to be given.

3. In Table 7 at page 10 of the FOST, with respect to Quitclaim Deed No. 6, please review and correct the acreage of the "Remaining Parcel," which is erroneously stated to be 14.55 acres. The area of

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property to be conveyed by Quitclaim Deed No. 6 which is not included in AOC A is considerably less than 14.55 acres.

4. The initial clause of Section 5.0 (d) at page 10 of the FOST should be changed to read:

Each Quitclaim Deed to be provided to the IDB with respect to property covered by the Navy's Covenant Deferral Request as approved by the Governor of Tennessee will contain the following access clause as to the property covered by such Covenant Deferral Request:

In addition, at the end of Section 5.0 (d) of the FOST, the following language should be added:

As to any property not covered by the Navy's Covenant Deferral Request, each Quitclaim Deed to be provided to the IDB will contain the following access clause:

The Grantee covenants that the Grantor shall have access to the Property in any case in which a response action or corrective action is found to be necessary after the date of this Deed and shall have access where necessary to carry out a response action or corrective action on adjoining property. In exercising these rights of access, except in the case of imminent endangerment to human health and the environment, the Grantor (a) shall give the Grantee or the then-owner of such property reasonable prior written notice of the actions to be taken related to such response or corrective actions and of the areas affected, and (b) shall make reasonable efforts to minimize interference with the ongoing use of the areas. Furthermore, the Grantor and the Grantee (on behalf of itself, its successors and assigns) agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and the Grantee's, its successor's or assignee's use of said areas. Any inspection, survey, investigation, or other response, corrective or remedial action undertaken by Grantor will, to the maximum extent practicable, be coordinated with representatives designated by the Grantee or the then-owner of the property.

The reasons for the changes are that the foregoing access clause is the same (or substantially the same) as that proposed by the Navy in paragraph 1.b of its draft Quitclaim Deed dated 07/21/99, and fully satisfies the requirements of 42 U.S.C. § 9620(h)(3)(A) and 42 U.S.C. § 9620(h)(4)(D)(ii). The more onerous access

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clause presently set out in Section 5.0 (d) of the FOST is required only with respect to the property covered by the Navy's Covenant Deferral Request and, if employed for the remaining property for which the CERCLA Covenant is given, might unduly and unnecessarily impair or restrict the planned redevelopment and use of such property, which is, of course, the purpose underlying the designation of the property as an economic development conveyance. For these reasons, the IDB strongly urges the foregoing modifications to the language of the FOST.

5. The Indemnification Clause set out in Section 5.0 (f) of the FOST should be amended to read as follows:

"The federal government will indemnify and hold harmless the IDB, any other person or entity that acquires ownership or control of any portion of the Subject Property, and any successor, assignee, transferee, lender or lessee of any of the foregoing from future financial liability any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) which might result from the presence of any environmental contamination which may be found on the Subject Property relative to Department of Defense use to the extent authorized by Section 330 of Public Law 102-484."

The language presently set out in the FOST is much narrower than that required by Section 330 of the National Defense Authorization Act of 1993, as amended (Pub. L. No. 102-484), and should be modified to reflect more accurately the Navy's indemnification obligations thereunder. The IDB believes that since the various disclosures of environmental issues will be recorded in the real estate records as part of the Quitclaim Deeds, it is equally important to set out more fully in the recorded deeds the Navy's statutory obligation to protect the IDB and subsequent owners against environmental risks. This approach should help alleviate concerns of persons or entities proposing to purchase property for development and, therefore, furthers the economic development conveyance goals envisioned for the property.

6. In Table 8 of the FOST, the following changes should be made:

(a) If remediation of the Turkey Shoot Area is completed prior to transfer of the property by Quitclaim Deed No. 3 (as the Navy has represented that it will be), the restriction in Table 8 against intrusive activities without prior approval should be deleted.

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(b) As to SWMU 5 (to be conveyed by Quitclaim Deed No. 4), the nature of the restriction on use of the property is unclear. If the restriction is to be against intrusive activities without prior approval (as in the case of SWMU 8 and SWMU 60), the language of Table 8 should be modified to so indicate.

(c) For Quitclaim Deed No. 8, the language under the 4th column ("Type of Reuse Allowed") should be modified to read "No Restrictions on Type of Use."

7. The Lead-Based Paint Disclosure Statement set out at Exhibit "F" to the FOST should be deleted in its entirety, and the Lead-Based Paint Disclosure Statement which is attached to this letter as Exhibit "F" should be substituted in lieu thereof. The reasons for this change are that (a) the Lead-Based Paint Disclosure Statement should more closely match the Asbestos and PCB disclosure statements attached as Exhibits "E" and "G" to the FOST, (b) the Lead-Based Paint disclosure (like the Asbestos and PCB disclosures) may appropriately be given as a deed attachment, rather than a separately-signed document, and (c) certain language in the Lead-Based Paint Disclosure Statement (relating to "bid openings" and "tender offers") is simply inapposite in the context of the deeds to the IDB.

8. In Exhibit "I" to the FOST, the disclosure for the Fuel Farm (Quitclaim Deed No. 3) should be corrected. According to the heading at the top of the Exhibit, a single asterisk (*) indicates "storage" and a double asterisk (**) indicates "release." The IDB has received no indication or evidence of a release of the identified substances over an area of 6.71 acres. If the intent is to give notice of storage of the substances on 6.71 acres of land, the double asterisks (**) should be changed to single asterisks (*). If the intent is to disclose a release of these substances, the acreage referred to in Exhibit "I" should be changed to reflect the far smaller areas designated as Map Identification Nos. 10 and 11 on the Petroleum Notification Map attached as Exhibit "D" to the FOST.

9. The Land Use Control Implementation Plan ("LUCIP") which is attached as Exhibit "J" to the FOST should be amended (beginning with the third paragraph on page 3 of the LUCIP) to read as follows:

In addition to the above delineated use restrictions, the following general LUC implementation and maintenance related requirements will be incorporated into each of the deeds (except as otherwise specified below) which will convey the Non-Airfield Parcel to the MIDB:

1. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that in the event the MIDB or such other party(ies)

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desires to use the property (other than the property conveyed by Quitclaim Deed #8) for any use other than industrial, or commercial or recreational use, then the MIDB or such other party(ies) shall perform, at its / their sole cost and expense, all additional environmental remediation required by law or applicable regulatory authorities for such other uses and shall further comply with all laws, rules, regulations and ordinances pertaining thereto. Permissible industrial, commercial or recreational uses shall also include office use and any similar use incidental to the aforementioned uses if such incidental use is permitted by applicable regulatory authorities without requiring further environmental remediation beyond that required for industrial, commercial or recreational use of the property.

2. The MIDB on behalf of its lessees, licensees, successors and assigns will be required to covenant that it will (i) provide written notice to the United States of its intent to use the property (other than the property conveyed by Quitclaim Deed #8) for anything other than industrial, commercial or recreational use (ii) provide a description of its plans for undertaking any environmental investigation and/or cleanup activities necessary to permit such a change in land usage, and (iii) ensure that such activities will not conflict with any ongoing or future remedial activities to be taken by the United States or in any way serve to adversely affect any remedial remedies previously put in place by the United States on the property;

These revisions are consistent with the language in paragraph 1 on page 2 of the LUCIP (as well as our verbal understandings with you) and are necessary in order to prevent uncertainty and confusion in the recorded deeds.

10. A new paragraph should be added following paragraph no. 6 at page 4 of the LUCIP, reading as follows:

In the event that the MIDB, or any subsequent or successive successor or assign (each hereinafter called a "Transferor") shall convey any of the property by deed and in said conveyance shall impose upon the party to whom the property is transferred (the "Transferee") the foregoing requirements, duties and obligations, then

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Page 6

the Transferee, its successors and assigns shall be bound by such requirements, duties and obligations and the Transferor shall thereafter have no further responsibility with respect thereto.

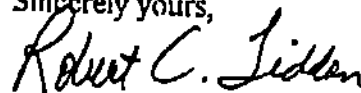
11. The following sentence should be added after the second sentence of paragraph no. 5 on page 5 of the LUCIP:

The form of annual LUC Compliance Certification will be modified as to each property to conform to the LUCs which are applicable to that property.

The reason for this change is that the sample form of certificate contains provisions which are not applicable to all properties. For example, neither paragraph 1 nor 2 is applicable to Deed No. 8; paragraph 2 is not applicable to any of the other properties unless and until the owner obtains permission to remove the restriction against residential uses; paragraph 4 is applicable only to those areas where deep water supply wells are prohibited, as described in Table 8 of the FOST; etc.

12. The heading at the top of Attachment 2 to the LUCIP should be changed to read "Sample Annual LUC Compliance Certification."

Sincerely yours,



Robert C. Liddon

RCL:jd

cc: Mr. Stephen A. Beverly
Mr. Bruce Joseph
Mr. Frank C. Ryburn
Mr. Phillip L. Whittenberg

VIA FACSIMILE
VIA FACSIMILE
VIA FACSIMILE
VIA FACSIMILE

EXHIBIT "F"

Lead-Based Paint Disclosure Statement

(a) Grantor hereby notifies and warns Grantee as follows:

YOU ARE ADVISED THAT BUILDINGS CONSTRUCTED PRIOR TO 1978 MAY PRESENT EXPOSURE TO LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL DAMAGE. YOU ARE FURTHER ADVISED THAT LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT WOMEN. WORKERS MAY ALSO SUFFER ADVERSE HEALTH EFFECTS FROM LEAD DUST OR FUME EXPOSURE.

(b) Grantee acknowledges that the Environmental Baseline Survey for Transfer (EBST), and Finding of Suitability for Transfer (FOST), represent the best information available to Grantor as to the presence of Lead-Based Paint and Lead-Based Paint hazards in the buildings referred to in the FOST.

(c) By its acceptance of this Deed, Grantee acknowledges and agrees that Grantee, its successors and assigns shall assume full responsibility for preventing future lead exposure by properly managing and maintaining, or, as required by applicable federal, state or local laws or regulations, for abating any Lead-Based Paint hazard which may pose a risk to human health.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-3104

4WD-FFB

November 8, 1999

David L. Porter
BRAC Environmental Coordinator
NSA Memphis
P. O. Box 190010
2155 Eagle Drive
North Charleston, South Carolina 29419-0910

SUBJ: Comments on Draft Finding of Suitability to Transfer (FOST), dated October 19, 1999
for the Non-Airfield Parcel at NSA Mid-South

Dear Mr. Porter:

This letter is in response to the Draft Finding of Suitability to Transfer (FOST) for the Non-Airfield Parcel at NSA Mid-South, dated October 19, 1999, prepared by the Southern Division, Naval Facilities Engineering Command.

COMMENTS

Groundwater at background well cluster number 5 is contaminated by tetrachloroethylene at levels above MCLs. It is EPA's view that, since the groundwater at this location is likely to require further characterization and remediation, it is inappropriate to give the statutorily-mandated covenant under CERCLA § 120(h)(3)(A)(ii)(I), that all remedial action necessary to protect human health and the environment has been taken. This covenant must be given at the time of transfer, or else deferred, with approval of the Governor, under the Covenant Deferral Request procedures of CERCLA § 120(h)(3)(C). Since neither avenue is being taken with regard to the property at well cluster number 5, the transfer is premature. EPA notes that the Land Use Control Implementation Plan (LUCIP) describes a system incorporating deed restrictions and local regulatory oversight by the Memphis-Shelby County Health Department in prohibiting the drilling of wells for any purpose in this area. This effort, while affording interim protection to users of the property, does not, at this time, satisfy all necessary remedial action.

The following comments pertain to the remainder of the property at NSA Mid-South.

1. FOST Table 1. This table should include Background Well Cluster #5 as an area requiring further action.
2. FOST Table 6. Pesticides were stock-piled at SWMU 8. This should be included in the known substances for Quitclaim Deed #1.
3. Page 11 of 14, last sentence. FDEP should be changed to TDEC.
4. FOST, Table 8. This should be revised to indicate that residential use is allowed for Parcel 8.
5. Exhibit I, Page 2, 1st paragraph. This paragraph states that there are no water supply wells in the fluvial deposits aquifer on or within one mile of the base. With the installation of the well at the new nursery near Highway 51 and Shipp Road, this statement should be changed. This new well is within one mile of the base and known fluvial deposits groundwater contamination. In addition, although the well on the McNamara property is not currently in use, it is a water supply well within one mile of the property boundary and should be mentioned in this paragraph.
6. Exhibit J, Land Use Control Implementation Plan (LUCIP), Groundwater Related Restrictions. The intention of the second sentence appears to be (1) to prohibit the drilling of wells through AOC A and near Background Well Cluster #5 into the Memphis Sands or deeper aquifers and (2) to allow drilling into the Memphis or deeper Aquifer elsewhere only if double-cased and grouted and installed in a manner to preclude the potential for downward migration of contamination into deeper aquifer(s) and only with prior authorization of the Navy. The wording, however, is confusing. Please consider the following language in substitution:

The installation of any well for the extraction of groundwater from the Memphis Sands or any deeper aquifer underlying the property will not be prohibited on the requisite conditions that the well is double-cased and grouted, is installed in a manner to preclude the potential for downward migration of contamination into the deeper aquifer(s), is not located in Background Well Cluster #5 or AOC A areas, and has prior written authorization from the Navy. In the areas of Background Well Cluster #5 and AOC A, depicted in Attachment 1, the installation of any such wells is prohibited.
7. Exhibit J, LUCIP, LUC Maintenance, p.4. EPA analyzes the suitability of the transfer based, in part, upon the viability of the layering scheme envisioned by the LUCIP. Written confirmation from, and not merely a request to, the Memphis-Shelby County Health Department and the City of Millington Planning Commission will evidence that viability.

Conversations between the Navy, TDEC, EPA and the above agencies indicate that the local regulatory agencies will accept the responsibilities to monitor and enforce the land use restrictions within their purview.

8. EPA notes that, prior to its execution and recordation, the Navy will provide a draft copy of each deed to afford an opportunity to review the LUC-related provisions.

EPA provisionally concurs with the suitability of this transfer, anticipating the substantial incorporation of these comments and receipt and satisfactory review of 1) the letters of acceptance by the local regulatory agencies and 2) the deeds. EPA will provide a final comment on the suitability of this transfer¹ after their review. If you have any questions, please call me at (404) 562-8554.

Sincerely,



Brian Donaldson
Environmental Engineer

cc: Martha Brock, OLS

¹With the exception of the area of Background Well Cluster #5, upon which EPA has already provided final comment in this letter.

THE COMMERCIAL APPEAL

PUBLIC NOTICE

Notification of the Department of the Navy's Intent to Execute Two Findings of Suitability to Transfer (FOSTs) for Surplus Property at the Naval Support Activity Mid-South, Millington, Tennessee

In 1993, certain real property and facilities at the Naval Support Activity, Mid-South Millington, Tennessee, were selected for disposal consistent with requirements established under the Base Closure and Realignment Act of 1990 (BRAC). The Department of the Navy (Navy) has since undertaken the investigation and cleanup of certain environmental concerns associated with such surplus property and has now determined that under existing law, they are suitable for deed transfer to the City of Millington for purposes of community redevelopment. This determination was made in accordance with the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Recovery Act of 1980, "CERCLA" (42 U.S.C. Sec. 9620(h)), and was contingent upon approval by the Office of the Governor of a formal request by the Navy to "early transfer" those portions of the property where certain environmental investigation and remediation activities remain to be conducted by the Navy.

Two separate parcels will be transferred to the City of Millington (the "Airfield" and "Non-Airfield" parcels). Together these parcels make up approximately 1861 acres and consist of all of the remaining BRAC property to be made available for community redevelopment. The Navy intends to execute two separate Findings of Suitability to Transfer (FOSTs) to document its suitability determinations with regards to these parcels. These documents will accompany the deeds which will transfer the property and facilities to the City of Millington. The Navy's suitability determinations are based upon information contained in those Environmental Baseline Surveys for Transfer (EBST) prepared for each parcel, the City of Millington's Reuse Plan for these parcels and State Governor approval of the Navy's early transfer request.

A copy of the draft FOST and final EBST for each parcel and pertinent supporting documentation can be reviewed in the Information Repository established for the Naval Support Activity. The repository is located in the Millington Branch of the Shelby County Library, 4858 Navy Road, Millington, Tennessee 38053.

Should anyone desire to submit written comments on either FOST to the Navy for consideration, such comments should be postmarked by November 10, 1999 and should be mailed to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, (Attn: Code 18B2), P.O. Box 190010, North Charleston, South Carolina 29419-9010.

QUESTIONS REGARDING THIS NOTICE MAY BE DIRECTED TO SUE MILLICAN, PUBLIC AFFAIRS OFFICE, NAVAL SUPPORT ACTIVITY MEMPHIS, (901) 874-5761.



DEPARTMENT OF THE NAVY
SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
P.O. BOX 180010
2155 EAGLE DRIVE
NORTH CHARLESTON, S.C. 29419-8010

Code 18B2
19 October 1999

Mr. Brian Donaldson, Remedial Project Manager
U.S. Environmental Protection Agency
Region IV
Code BD/FFB/BRAC
61 Forsyth Street
Atlanta, GA 30303

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Dear Mr. Donaldson:

In response to your letter of 17 June 1999 providing comments on the subject FOST, along with subsequent discussions and conversations, please find enclosed for your review a final draft FOST for the Non-Airfield parcel at NSA Mid-South. The availability of the enclosure for a 14-day public comment period will be advertised in the Commercial Appeal and The Millington Star.

Please note that the Environmental Baseline Survey for Transfer (EBST) referred to as Exhibit "A" in the FOST is the EBST for the Non-Airfield dated 2 July 1999, previously forwarded to you by EnSafe. Copies of this document are also available in the repositories for public review. Exhibit "C" (approved CERCLA 120(h)(E)(C) Covenant Deferral Request) has been forwarded separately.

Specific responses to your comments are provided below:

Comment: *As noted in the Non-Airfield EBST, groundwater at background well cluster number 5 is contaminated with tetrachloroethylene. Although this contamination appears to be from an off-base, non-Navy source, and the Navy may not be responsible for this release, the CERCLA 120(h)(3) covenant that all remedial action has been taken is inappropriate for this property. If they Navy decides to transfer this property before the remedial has been taken this contaminated area should be addressed through a Covenant Deferral Request (CDR) pursuant to CERCLA 120(h)(3)(C).*

Response: The Navy has expended considerable expense and effort collecting data to support the conclusion by the BRAC Cleanup Team that the contamination in question is from an off-site non-Navy source. The Navy does not agree that we need to include such contamination under our CDR, nor does the Navy agree that we cannot provide the CERCLA Section 120(h)(3)(A)(ii)(I) deed covenant required for transfer of the property to the City before the State or the responsible party completes all necessary remedial action(s). The Navy does plan, however, to include this area under the LUCIP to restrict activities/usage that might allow for unacceptable environmental or human health threats in the interim.

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Comment: *Section 3.0, Past Use and Proposed Reuse. The industrial and business park reuse for the property contemplates some office/residential use. Please clarify the location of the planned office/residential area in relation to past release or disposal of hazardous substances, including labeling this specific area on the map. The suitability determination in Section 6 of the FOST references use only as an industrial and business park. Please verify that the Navy has appropriately considered whether the office/residential use is consistent with protection of human health and the environment in the statement of suitability.*

Response: The city's Reuse Plan envisioned "office/residential" uses in the area north of the former Navy Hospital (46.920 acres). This area is identified as Quitclaim Deed # 8 in the enclosed revised FOST. Maps and tables have been provided in the FOST which clarify the location of this area in relation to past release or disposal of hazardous substances.

Comment: *Section 5.0, "Requirements Applicable to Property Transfer". Exhibit C to the FOST, "Notice of Hazardous Substance Storage/Release." Which supplies notice to the transferee of the storage, release or disposal on the property of hazardous substances, should be accompanied by the following statement, prominently displayed: "The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation (CERCLA or "Superfund") 42 U.S.C. section 9620(h)."*

Response: The suggested statement has been added to the table, included as Exhibit "I" in the revised draft FOST.

Comment: *Section 5.0, "Requirements Applicable to Property Transfer". The CERCLA covenant in subparagraph c should be revised, as follows "...any additional remedial action found to be necessary after the date of such transfer shall be considered conducted by the United States."*

Response: The text has been modified as requested.

Comment: *FOST, Exhibit C, "Summary of Response Actions Taken," page 2, states that the estimated area of fluvial deposits groundwater contamination associated with AOC A is 205 acres while Table 1 of the FOST indicates 200 acres. The EBST, Executive Summary accounts for a maximum of 145 acres of contaminated groundwater in AOC A, with 15 contaminated acres contained in the Non-Airfield Parcel. The discrepancy in the information may be explained by having not corrected the text to reflect the current state of knowledge regarding the extent of the AOC A contaminated groundwater plume. Please clarify.*

Response: Table 7-1 of the revised EBST for the Non-Airfield Parcel (dated 2 July 1999) provides the updated acreage for areas of contamination. Tables in the FOST, as well as the "Summary of Response Actions Taken" have been revised to reflect the updated information from Table 7-1 of the EBST. It should be noted that based upon recent discussions with City representatives, the boundary line between the Airfield and Non-Airfield parcels has been modified: the property to the north of Funafuti Street is now included within the Airfield Parcel. Also, the City has requested eight (8) separate Quitclaim Deeds for the Non-Airfield parcel, and acreages for these areas, and the areas of contamination within these areas, are approximate until surveyed.

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Comment: *Exhibit D, Implementation Plan for Institutional Controls. See letter from EPA dated May 7, 1999, Revised Comment on Draft Implementation Plan for Institutional Controls for Transfer of Property at Naval Support Activity (NSA) Mid-South, Millington, Tennessee, for comments. This letter makes a few ministerial changes to comments provided earlier in an e-mail message dated March 30, 1999, and reflects modifications to the status of the EPA institutional control guidance. The March 30, 1999 comments had not yet been incorporated into the current Draft FOST.*

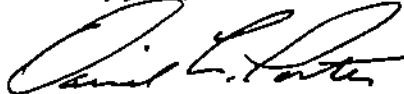
Response: The Land Use Control Implementation Plan (LUCIP) has been modified based on comments from EPA and the Tennessee Department of Environment and Conservation (TDEC), and is provided as Exhibit "J" in the revised draft FOST.

Comment: *The 'Environmental Restoration, Defense,' provision in the Department of Defense Appropriations Act of 1993 (H.R. 5504, 102d Cong.) provides that if DoD transfers or leases real property to a state or the political subdivision of a state, the U.S. shall hold harmless, defend and indemnify the State or political subdivision from all claims, demands, losses, damages, liens, liabilities, injuries deaths, penalties, fines, lawsuits and other proceedings, judgements awards and costs and expenses arising out of, or in any manner predicated upon, the presence, release or threatened release of any hazardous substance, pollutant or contaminant resulting from DoD activities, including the activities of any lessee, licensee or other person on the property during any time that the property was under DoD control. The FOST does not indicate the existence of such a provision, but it is a statutory imperative that the deed include such a provision.*

Response: A Transferee Indemnification clause has been added to the FOST, and will be included in the deed.

Thank you for your efforts in this matter, and please contact me at (803) 820-5610, email: porterdl@efdsouth.navfac.navy.mil, should you have any questions.

Sincerely yours,



David L. Porter, P.E.
BRAC Environmental Coordinator
NSA Mid-South

Enclosure: Draft FOST (w/o Exhibits A and B)

Copy to: Ms. Tonya Barker
Naval Support Activity Mid-South
Code 0101
5720 Integrity Drive
Millington, TN 38054-5045

Mr. Jim Morrison
Tennessee Department of Environment and Conservation
Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mt. Moriah
Memphis, TN 38115-1520



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL

COUNSEL FOR THE
SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
2155 EAGLE DRIVE, P.O. BOX 190010
NORTH CHARLESTON, SOUTH CAROLINA 29419-9010

15 October 1999

Robert C. Liddon, Esq.
Baker, Donelson, Bearman & Caldwell
12th Floor, First Tennessee Bldg.
165 Madison Avenue
Memphis, TN 38103

Subj: DRAFT FINAL FINDING OF SUITABILITY TO TRANSFER (FOST) FOR THE
NON-AIRFIELD PARCEL AT NSA MID-SOUTH

Dear Rob:

I have enclosed for your review our Draft Final FOST for the Non-Airfield parcel at NSA Mid-South. I would also like to relay to you the Navy's position regarding certain matters raised at our August meeting in Millington, and in your follow-on correspondence to myself and Mr. Bruce Joseph.

You will note that the revised FOST reflects many of the changes you suggested. We trust these changes will help facilitate prospective purchaser reviews of that information pertinent only to a given parcel or parcels. If additional changes are desired in this regard, please advise as soon as possible since we plan on putting the FOST out for public comment on October 24th.

I would like to briefly explain how we viewed the three suggested FOST inserts you included with your September 7th letter. As regards insert "A," we substantially adopted what you proposed by adding clarifying language to page 2 of the FOST. We believe what we added, albeit a streamlined version of what you provided, should be sufficient for the purposes for which it is intended. Unfortunately, we did not believe it appropriate to similarly adopt your proposed inserts "B" or "C."

We believe insert B would create an unnecessarily burdensome process for us to follow in order to exercise our statutory right to have access to those areas where either remedial efforts will need to continue, or where the discovery of previously unknown contamination will necessitate our return. The access clause currently included in the draft FOST would already commit us to performing such work in a manner which would minimize any interruptions to the then current owner's use of the property. It also would require us to coordinate such activities with that owner. We believe these two stipulations alone should suffice as they have for property transfers at other BRAC facilities.

Subj: DRAFT FINAL FINDING OF SUITABILITY TO TRANSFER (FOST) FOR THE
NON-AIRFIELD PARCEL AT NSA MID-SOUTH

As for insert C, previous discussions I have had with EPA Region IV, Navy Headquarters and Department of Justice (DOJ) counsel indicate mutual opposition towards reliance upon an MOA and City ordinance in lieu of including specific groundwater usage and well installation prohibitions in our transfer deeds. In fact, though we believe it unnecessary, EPA counsel even expressed a preference to see both approaches utilized as part of the layering strategy we have agreed to implement for ensuring the future maintenance of all necessary land use controls (LUCs). That strategy will ultimately be reflected in our final Land Use Control Implementation Plans (LUCIPs) for both the Non-Airfield and Airfield parcels.

The basic problem underlying insert C's approach is that it would take away the Navy's ability to directly enforce, through an independent and well established legal mechanism, namely, state property law, those LUCs which will be an integral part of our site remedies. The NSA Mid-South BRAC Cleanup Team (BCT) believes such controls are essential for ensuring future protection of human health and the environment. Hence, to limit our ability to pursue all legal avenues otherwise available to us for the enforcement of such controls would place the Navy at greater risk of incurring future cost liabilities. Such liabilities could range from possible regulator imposition of more costly alternative site remedies to having to possibly indemnify the City or one or more of its transferees under Section 330 of Public Law 102-484.

Finally, as you may know, the aforementioned layering strategy we are presently finalizing based upon previous U.S.EPA and TDEC input, calls for local regulatory agency participation to supplement not supplant, our LUC maintenance responsibilities as the best way to ensure effective long term oversight of our site remedies. This is also how we explained our strategy to representatives from both the City's planning commission and the Shelby County Public Health Department when we met with them in August and solicited their support for helping us to ensure LUCIP compliance. Thus, we believe for us to adopt insert C would clearly be inconsistent with this strategy, which is based largely upon existing U.S.EPA and Navy Headquarters LUC policy. In short, for all of the aforementioned reasons we do not view insert C as an acceptable option.

At our August meeting a separate question arose about the Navy's intentions with regards to those sites with residual petroleum contamination above 100ppm TPH. Since that time, the members of the BCT have been working to develop a map which will better delineate those areas. Additionally, I have had extensive discussions with Navy Headquarters representatives on what our obligations are in this regard and have further clarified with appropriate TDEC representatives what the potential impacts would be to future use of the property if such areas were to remain as they currently are.

Based upon the BCT's efforts, it now appears that the areas in question are limited to only portions of Quitclaim Deed Parcels 3, 4, 5, and 6. Each of the areas to be reflected on the aforementioned map currently have TPH levels above 100 ppm but within State cleanup guidelines. From our discussions with various TDEC representatives, it appears the only

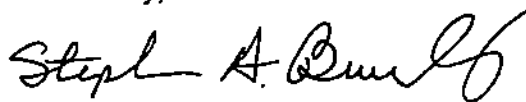
Subj: DRAFT FINAL FINDING OF SUITABILITY TO TRANSFER (FOST) FOR THE
NON-AIRFIELD PARCEL AT NSA MID-SOUTH

potential impact to future redevelopment would be increased costs for soil characterization and disposal if the City or any subsequent transferee elected to excavate in these areas and decided to dispose of any excess contaminated soil off-site. There would not appear to be any reason why the City or any subsequent transferee could not build new structures or install utilities on any of these sites as needed to facilitate their planned usage of the entire parcel.

Given that the sites in question were remediated to applicable state cleanup standards, we believe we are neither obligated by law or current BRAC policy to undertake further measures to reduce the TPN levels at each site to 100ppm. For this same reason, we believe it sufficient to simply utilize deed notices rather than recorded restrictions to preclude any future construction like we normally would do for sites such as landfills, where we know that a certain amount of contamination will remain in place as part of an approved site remedy. By providing notice both as to the existence of such sites and of the potential need for characterization of any soils to be disposed of off-site, we believe we give each prospective transferee the latitude to decide whether it wants to incur such costs should its development plans best be served by soil excavation in these areas and by the off-site disposal of such soils. This, in turn, should help minimize potential impacts to each parcel's marketability.

Should you have any questions concerning the matters discussed herein, please feel free to call me 843-820-5708.

Sincerely,



STEPHEN A. BEVERLY
Associate Counsel (*Environment*)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-3104

4WD-FFB

June 17, 1999

David L. Porter
BRAC Environmental Coordinator
NSA Memphis
P. O. Box 190010
2155 Eagle Drive
North Charleston, South Carolina 29419-0910

SUBJ: Comment on Draft Finding of Suitability to Transfer (FOST), dated March 15, 1999 for the Non-Airfield Parcel at NSA Mid-South

Dear Mr. Porter:

This letter is in response to the Draft Finding of Suitability to Transfer (FOST), dated March 15, 1999, prepared by the Southern Division, Naval Facilities Engineering Command, and Draft Environmental Baseline Survey for Transfer (EBST) for the Non-Airfield Parcel, Naval Support Activity Mid-South, Millington, Tennessee, dated January 13, 1999, prepared by EnSafe Inc. for the Southern Division, Naval Facilities Engineering Command.¹ Before the Environmental Protection Agency (EPA) can give final comment on the FOST, we must review the final documents.² EPA will issue final comment on the FOST expressly contingent upon final documents being provided by the Navy. The following comments, as the underlying Navy documents, are draft in nature.

¹Review of this request was conducted under CERCLA § 120(h).

² EPA considers "final form" to mean a final draft with all attached appendices. A FOST should include all proposed transfer documents in their entirety with all attached appendices. In the case of a deed or other transfer document, this is the form as it will be presented for signature to the prospective grantee, and as it will be signed by both the prospective grantee and the DoD.

As per the FOST provided, the Navy intends to transfer the Non-Airfield Parcel at NSA Mid-South, including approximately 1329 acres of land and 46 buildings and structures, to the City of Millington, for use as an industrial and business park development, with one area planned for office/residential use.

The Navy should provide a copy of the deed(s) or other transfer documents inclusive of all terms (including notices/covenants) both prior to and after execution of the documents.

EPA expects the Navy to attach any of our comments, to the extent they are not incorporated into or addressed by the final EBST, FOST, contract for sale³ and/or deed or assignment⁴ of transfer, as unresolved regulatory comments in an attachment to the documents.⁵

EPA reserves the right to alter our opinion of the suitability of the transfer upon receipt of the final FOST and executed transfer documents.

EPA is concerned with both protecting human health and the environment and achieving Congress' goal of expeditiously transferring uncontaminated and remediated real property to communities for economic redevelopment. Upon the Navy's providing information which will satisfy the following comments, EPA will be able to determine whether the transfer of the subject property is suitable.

COMMENTS

Environmental Baseline Survey to Transfer (EBST)

1. Three of the properties listed in Table 5-13, SWMU 5, AOC A and the "Turkey Shoot

³CERCLA requires that whenever the DoD enters into a contract for the sale or transfer of property on which any hazardous substance was known to have been stored for a year or more, released, or disposed of, the contract include notice of the type, quantity and time of storage, release or disposal. CERCLA § 120(h)(1).

⁴CERCLA §120(h)(3)(A).

⁵"Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST." DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Contaminated or Remediated Property, § IV(A).

area," are the subject of a Covenant Deferral Request under CERCLA §120(h)(3)(C), because all remedial action necessary to protect human health and the environment has not yet been taken. EPA and the State of Tennessee are evaluating the Navy's Covenant Deferral Request to determine whether the property is suitable for transfer for the use intended by the transferee and whether the intended use is consistent with protection of human health and the environment.

Table 5-13 lists additional properties where all remedial action necessary to protect human health and the environment has not yet been taken. These are: N-12 (Groundwater, Category 6 - Red), N-94 (Category 5 - Yellow) and N-102/112 (Groundwater, Category 6 - Red).⁶ Category 5 - Yellow indicates that all remedial actions have not yet been completed. Category 6 - Red indicates that required response actions have not yet been implemented. These sites appear to be contaminated exclusively with petroleum. If this assumption is correct, the EBST should re-categorize these properties and/or clarify this in the EBST and the FOST. If these parcels were characterized accurately, these properties would not be suitable for transfer under CERCLA §120(h)(3)(A), and should be considered for Covenant Deferral, under CERCLA §120(h)(3)(C), because the Navy is unable to give the covenant that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken.

2. Lead-Based Paint. EPA considers the presence of exterior lead-based paint to pose a potential CERCLA release to the environment. Section 3.0 of the FOST indicates that 23% of the property will have office/commercial and office/residential use. Please clarify whether there will be and which property is intended for residential use, and the rationale why the proposed office/residential use of the property does not implicate the Title X (42 U.S.C. 4822) and TSCA Section 403 standards of lead-based paint abatement.

Pending the results of a joint DoD/EPA pilot study, sampling of non-residential property for LBP is limited to certain types of metallic structures, including water towers, communications towers, and bridges. The following sites contain the types of structures/situations which are examples of this exterior lead-in-soil exposure scenario. Building N-12: Though it is not one the three types of structures cited above, black, granular material observed on the ground was described as potential sandblast material from paint stripping operation.⁷ Facility N-48 contains a water tower and an area where

⁶The groundwater at N-9 is ECP Category 6 - Red, but has been incorporated into AOC A.

⁷EBST, Section 3.5.

personnel who painted the water tower cleaned their brushes.⁸ Because the Navy has not sampled the soils in these areas, EPA does not believe that there is an adequate basis for the Navy determination that all remedial action necessary to protect human health and the environment has been taken.

3. Asbestos. Descriptions of the following buildings and/or structures in Section 3.0, Past and Current Operations, indicate the presence of or the potential for friable asbestos: Building N-7, Building N-11, Buildings N-201/N-208 (Johnson Housing Units), and S-172. Section 5-7 and Table 5-9 indicate that asbestos may remain in Buildings N-7, N-16, N-122, S-172, 339, 377, 382, 1455, Riding Academy and Navy Lakes (761 and 1584), some of it damaged. Please clarify the condition of asbestos in these buildings and reconcile the two sections.

Finding of Suitability to Transfer (FOST)

4. As noted in the Non-Airfield EBST, groundwater at background well cluster number 5 is contaminated with tetrachloroethylene. Although this contamination appears to be from an off-base, non-Navy source, and the Navy may not be responsible for this release, the CERCLA §120(h)(3) covenant that all remedial action has been taken, is inappropriate for this property. If the Navy decides to transfer this property before the remedial has been taken, this contaminated area should be addressed through a Covenant Deferral Request (CDR) pursuant to CERCLA § 120(h)(3)(C).
5. Section 3.0, Past Use and Proposed Reuse. The industrial and business park reuse for the property contemplates some office/residential use. Please clarify the location of the planned office/residential area in relation to past release or disposal of hazardous substances, including labeling this specific area on the map. The suitability determination in Section 6 of the FOST references use only as an industrial and business park. Please verify that the Navy has appropriately considered whether the office/residential use is consistent with protection of human health and the environment in the statement of suitability.
6. Section 5.0, "Requirements Applicable to Property Transfer". Exhibit C to the FOST, "Notice of Hazardous Substance Storage/Release," which supplies notice to the transferee of the storage, release or disposal on the property of hazardous substances, should be accompanied by the following statement, prominently displayed: "The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section

⁸EBST, Section 3.9.

9620(h).”⁹

7. Section 5.0, “Requirements Applicable to Property Transfer”. The CERCLA covenant in subparagraph c should be revised, as follows “...any additional remedial action found to be necessary after the date of such transfer shall be ~~considered~~ conducted by the United States.”
8. FOST, Exhibit C, “Summary of Response Actions Taken,” page 2, states that the estimated area of fluvial deposits groundwater contamination associated with AOC A is 205 acres while Table 1 of the FOST indicates 200 acres. The EBST, Executive Summary accounts for a maximum of 145 acres of contaminated groundwater in AOC A, with 15 contaminated acres contained in the Non-Airfield Parcel.¹⁰ The discrepancy in the information may be explained by having not corrected the text to reflect the current state of knowledge regarding the extent of the AOC A contaminated groundwater plume. Please clarify.
9. Exhibit D, Implementation Plan for Institutional Controls. See letter from EPA dated May 7, 1999, Revised Comment on Draft Implementation Plan for Institutional Controls for Transfer of Property at Naval Support Activity (NSA) Mid-South, Millington, Tennessee, for comments. This letter makes a few ministerial changes to comments provided earlier in an e:mail message dated March 30, 1999, and reflects modifications to the status of the EPA institutional control guidance. The March 30, 1999 comments had not yet been incorporated into the current Draft FOST.
10. The ‘Environmental Restoration, Defense,’ provision in the Department of Defense Appropriations Act of 1993 (H.R. 5504, 102d Cong.) provides that if DoD transfers or leases real property to a state or the political subdivision of a state, the U.S. shall hold harmless, defend and indemnify the State or political subdivision from all claims, demands, losses, damages, liens, liabilities, injuries deaths, penalties, fines, lawsuits and other proceedings, judgements awards and costs and expenses arising out of, or in any manner predicated upon, the presence, release or threatened release of any hazardous substance, pollutant or contaminant resulting from DoD activities, including the activities of any lessee, licensee or other person on the property during any time that the property

⁹40 CFR 373.3.

¹⁰EBST, Executive Summary, page xi, states that AOC A on the Non-Airfield parcel contains 15 acres of contaminated groundwater, while on the Airfield parcel contains 130 acres, added together sum only 145 acres. The Executive Summary “Findings” on page xi describes only 100 acres in both parcels (15 from AOC A) and states, “The area of AOC A contamination may or may not extend further into the non-airfield parcel.” The “Conclusion” in the Non-Airfield Parcel, page xiv, states that there are 25 contaminated acres (15 from AOC A).

was under DoD control. The FOST does not indicate the existence of such a provision, but it is a statutory imperative that the deed include such a provision.

If the military chooses not to respond to these comments, EPA should consider characterizing our comments as "unresolved regulatory comments" pursuant to DoD policy on FOSTs, and have said comments placed as an attachment to the FOST. DoD should be placed on notice that their failure to comply with the above-delineated CERCLA requirements, may subject the Facility to citizen suits under CERCLA § 310 for failure to perform specified, non-discretionary duties. If you have any questions, please call me at (404) 562-8554.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Donaldson", written in a cursive style.

Brian Donaldson
Environmental Engineer

cc: James Morrison, TDEC



DEPARTMENT OF THE NAVY

SOUTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
P.O. BOX 190010
2155 EAGLE DRIVE
NORTH CHARLESTON, S.C. 29419-0010

Code 18B2
15 March 1999

Mr. Brian Donaldson, Remedial Project Manager
U.S. Environmental Protection Agency
Region IV
Code BD/FFB/BRAC
61 Forsyth Street
Atlanta, GA 30303

Mr. Jim Morrison
Tennessee Department of Environment and Conservation
Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mt. Moriah
Memphis, TN 38115-1520

SUBJ: FINDING OF SUITABILITY TO TRANSFER (FOST), NON-AIRFIELD PARCEL, NSA MID-SOUTH

Dear Mr. Donaldson and Mr. Morrison:

Please find enclosed for your review a draft FOST for the Non-Airfield parcel at NSA Memphis. The Environmental Baseline Survey for Transfer (EBST) referred to as Exhibit A in the FOST is the EBST for the Non-Airfield dated 13 January 1999, previously forwarded to you by EnSafe.

Please note that as a draft document, the enclosed FOST refers to other documents and actions yet to be finalized (e.g., asbestos abatement, public notice, and the Covenant Deferral Request).

As established in our calendar year 1999 Team Goals, our target completion for this FOST is 3rd quarter. In order to meet this schedule it is requested that you provide comments on this draft by 30 April 1999.

Thank you for your efforts in this matter, and please contact me at (803) 820-5610, email: porterdl@efdsouth.navfac.navy.mil, should you have any questions.

Sincerely yours,

David L. Porter
BRAC Environmental Coordinator
NSA Memphis

Enclosure: FOST with attachments